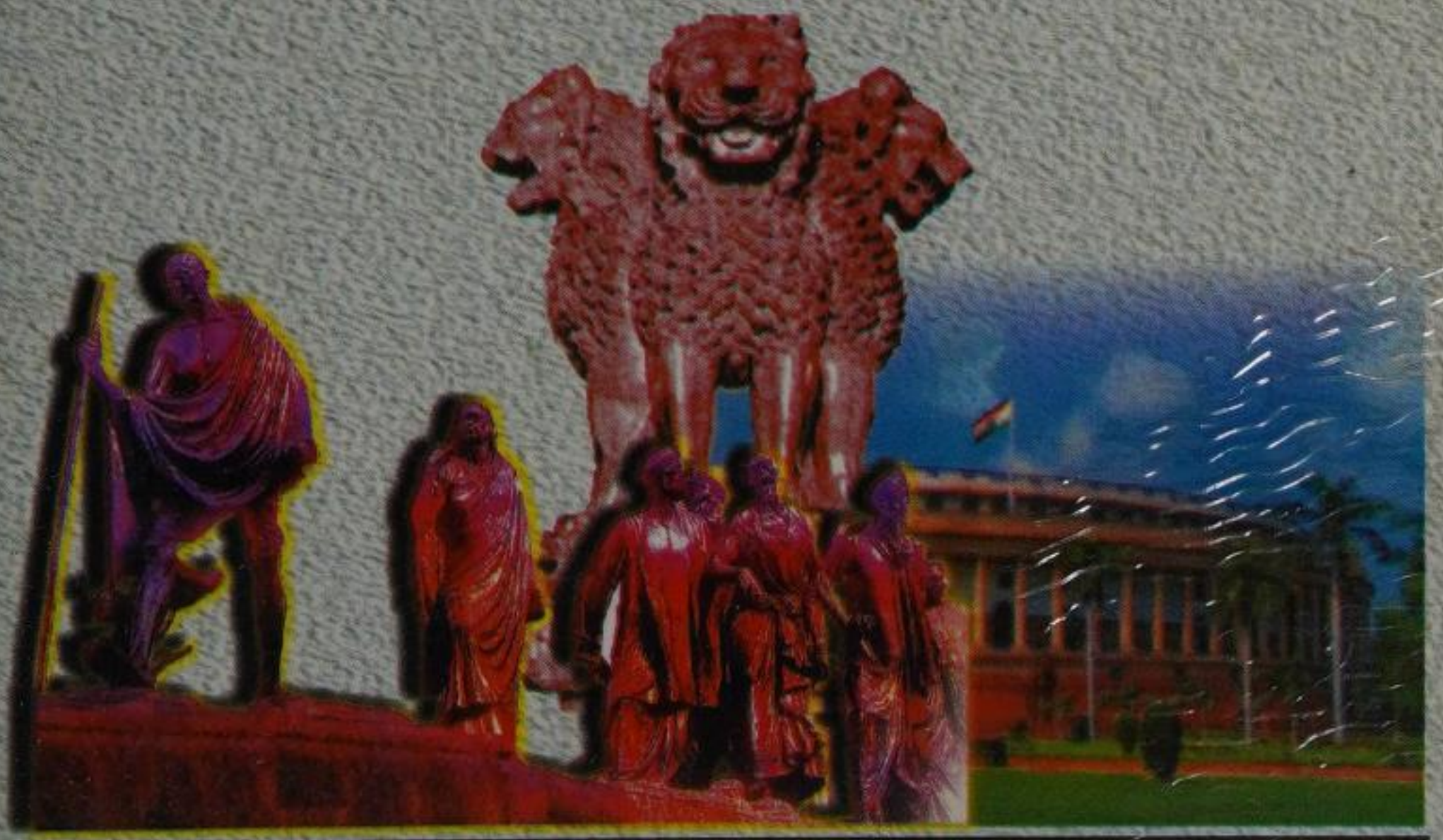
THE CONSTITUTION OF INDIA

With Selective Comments by

P. M. Bakshi



UNIVERSAL LAW PUBLISHING CO. PVT. LTD.

SHOUT
SHARE
IT

The
Constitution of India

with

Comments & Subject Index

The Constitution of India

with

Comments & Subject Index

Selective Comments

by

P.M. Bakshi

Former Director, Indian Law Institute

Former Member of the Law Commission of India

2001

Universal

Law Publishing Co. Pvt. Ltd.

Price Rs. 55

First Edition 1991
Second Edition 1992
Third Edition 1996
Fourth Edition 2000
Updated Reprint 2001

Incorporating therein all the amendments upto and including the Constitution (Eighty-third Amendment) Act, 2000 and the Reorganisation Acts of Bihar, MP and UP (2000)

ISBN 81-7534-176-9

© Publishers

No part of this publication can be reproduced or transmitted in any form or by any means, without prior permission of the Publishers.

Published by
UNIVERSAL LAW PUBLISHING CO. PVT. LTD.
C-FF-1A, Ansal's Dilkhush Industrial Estate,
G.T. Karnal Road, Delhi-110033
Phones : 7215334, 7438103, 7458529
Fax : 91-11-7459023
e-mail : unilaw@vsnl.com
Website : www.unilawbooks.com

Although every care has been taken to avoid errors or omissions, this publication is being sold on the condition and understanding that information given in this book is merely for reference and must not be taken as having authority of or binding in any way on the authors, editors, publishers and sellers who do not owe any responsibility for any damage or loss to any person, a purchaser of this publication or not, for the result of any action taken on the basis of this work. For authoritative information, please contact the department concerned or refer to the Gazette Notification. The publishers shall be obliged if mistakes are brought to their notice for carrying out corrections in the next edition. All disputes are subject of Delhi Jurisdiction only.

Computer Typeset at Aesthetic & *Printed* at Taj Press, New Delhi

PUBLISHERS' NOTE

Amongst the Constitutions of the World, Indian Constitution holds a distinction of being the longest. The Constitution of India has been a model for developing countries and as we have entered the 21st Century, we are celebrating 50 years of our Constitution since it was adopted.

At Universal, your satisfaction is our obsession and keeping this motto, we are happy to present the updated millennium edition of this best-seller with selective comments by Shri P.M. Bakshi, former member, Law Commission of India who has updated the case law and other issues in his sharp and lucid style.

December 2000 **Universal Law Publishing Co. Pvt. Ltd.**

CONTENTS

Publishers Note — *Page* v

PREAMBLE

Article

PART I

THE UNION AND ITS TERRITORY

1. Name and territory of the Union 6
2. Admission or establishment of new States 7
2A. *[Repealed.]* 7
3. Formation of new States and alteration of areas, boundaries or names of existing States 7
4. Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters 8

PART II

CITIZENSHIP

5. Citizenship at the commencement of the Constitution 8
6. Rights of citizenship of certain persons who have migrated to India from Pakistan 9
7. Rights of citizenship of certain migrants to Pakistan 9
8. Rights of citizenship of certain persons of Indian origin residing outside India 9
9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens 9
10. Continuance of the rights of citizenship 10
11. Parliament to regulate the right of citizenship by law 10

PART III

FUNDAMENTAL RIGHTS

General

12. Definition 10
13. Laws inconsistent with or in derogation of the fundamental rights 13

Right of Equality

14. Equality before law 17
15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth 26
16. Equality of opportunity in matters of public employment 29
17. Abolition of untouchability 33
18. Abolition of titles 33

Right to Freedom

19. Protection of certain rights regarding freedom of speech, *etc.* 34
20. Protection in respect of conviction for offences 44
21. Protection of life and personal liberty 47
22. Protection against arrest and detention in certain cases 59

Article *Page*

Right against Exploitation

23. Prohibition of traffic in human beings and forced labour 63
24. Prohibition of employment of children in factories, *etc.* 64

Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion 64
26. Freedom to manage religious affairs 66
27. Freedom as to payment of taxes for promotion of any particular religion 68
28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions 68

Cultural and Educational Rights

29. Protection of interests of minorities 68
30. Right of minorities to establish and administer educational institutions 69
31. *[Repealed.]* 74

Saving of certain laws

31A. Saving of laws providing for acquisition of estates, *etc.* 74
31B. Validation of certain Acts and Regulations 76
31C. Saving of laws giving effect to certain directive principles 76
31D. *[Repealed.]* 77

Right to Constitutional Remedies

32. Remedies for enforcement of rights conferred by this Part 77
32A. *[Repealed.]* 85
33. Power of Parliament to modify the rights conferred by this Part in their application, *etc.* 85
34. Restriction on rights conferred by this Part while martial law is in force in any area 87
35. Legislation to give effect to the provisions of this Part 87

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

36. Definition 88
37. Application of the principles contained in this Part 88
38. State to secure a social order for the promotion of welfare of the people 89
39. Certain principles of policy to be followed by the State 89
39A. Equal justice and free legal aid 91
40. Organisation of village panchayats 92
41. Right to work, to education and to public assistance in certain cases 92
42. Provision for just and humane conditions of work and maternity relief 92
43. Living wage, *etc.*, for workers 92
43A. Participation of workers in management of industries 92
44. Uniform civil code for the citizens 92
45. Provision for free and compulsory education for children 94
46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections 94

Article *Page*

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health 94
48. Organisation of agriculture and animal husbandry 94
48A. Protection and improvement of environment and safeguarding of forests and wild life 94
49. Protection of monuments and places and objects of national importance 95
50. Separation of judiciary from executive 95
51. Promotion of international peace and security 95

PART IVA

FUNDAMENTAL DUTIES

51A. Fundamental duties 96

PART V

THE UNION

CHAPTER I — THE EXECUTIVE

The President and Vice-President

52. The President of India 97
53. Executive power of the Union 97
54. Election of President 98
55. Manner of election of President 98
56. Term of office of President 99
57. Eligibility for re-election 99
58. Qualifications for election as President 99
59. Conditions of President's office 99
60. Oath or affirmation by the President 100
61. Procedure for impeachment of the President 100
62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy 100
63. The Vice-President of India 100
64. The Vice-President to be *ex-officio* Chairman of the Council of States 101
65. The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President 101
66. Election of Vice-President 101
67. Term of office of Vice-President 102
68. Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy 102
69. Oath or affirmation by the Vice-President 102
70. Discharge of President's functions in other contingencies 102
71. Matters relating to, or connected with, the election of a President or Vice-President 102
72. Power of President to grant pardons, *etc.*, and to suspend, remit or commute sentences in certain cases 103
73. Extent of executive power of the Union 106

Article		Page
	Council of Ministers	
74.	Council of Ministers to aid and advise President	107
75.	Other provisions as to Ministers	108
	The Attorney-General for India	
76.	Attorney-General for India	108
	Conduct of Government Business	
77.	Conduct of business of the Government of India	109
78.	Duties of Prime Minister as respects the furnishing of information to the President, *etc.*	109
	CHAPTER II — PARLIAMENT	
	General	
79.	Constitution of Parliament	110
80.	Composition of the Council of States	110
81.	Composition of the House of the People	110
82.	Readjustment after each census	111
83.	Duration of Houses of Parliament	111
84.	Qualification for membership of Parliament	112
85.	Sessions of Parliament, prorogation and dissolution	112
86.	Right of President to address and send messages to Houses	112
87.	Special address by the President	112
88.	Rights of Ministers and Attorney-General as respects Houses	113
	Officers of Parliament	
89.	The Chairman and Deputy Chairman of the Council of States	113
90.	Vacation and resignation of, and removal from, the office of Deputy Chairman	113
91.	Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman	113
92.	The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration	113
93.	The Speaker and Deputy Speaker of the House of the People	114
94.	Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker	114
95.	Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker	114
96.	The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration	114
97.	Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker	115
98.	Secretariat of Parliament	115
	Conduct of Business	
99.	Oath or affirmation by members	115
100.	Voting in Houses, power of Houses to act notwithstanding vacancies and quorum	115
	Disqualifications of Members	
101.	Vacation of seats	115

Article *Page*

102. Disqualifications for membership 116
103. Decision on questions as to disqualifications of members 117
104. Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified 118

Powers, Privileges and Immunities of Parliament and its Members

105. Powers, privileges, *etc.* of the Houses of Parliament and of the members and committees thereof 118
106. Salaries and allowances of members 120

Legislative Procedure

107. Provisions as to introduction and passing of Bills 120
108. Joint sitting of both Houses in certain cases 120
109. Special procedure in respect of Money Bills 121
110. Definition of "Money Bill" 121
111. Assent to Bills 122

Procedures in Financial Matters

112. Annual financial statement 122
113. Procedure in Parliament with respect to estimates 123
114. Appropriation Bills 123
115. Supplementary, additional or excess grants 124
116. Votes on account, votes of credit and exceptional grants 124
117. Special provisions as to financial Bills 125

Procedure Generally

118. Rules of procedure 125
119. Regulation by law of procedure in Parliament in relation to financial business 125
120. Language to be used in Parliament 125
121. Restriction on discussion in Parliament 126
122. Courts not to inquire into proceedings of Parliament 126

CHAPTER III — LEGISLATIVE POWERS OF THE PRESIDENT

123. Power of President to promulgate Ordinances during recess of Parliament 126

CHAPTER IV — THE UNION JUDICIARY

124. Establishment and Constitution of Supreme Court 127
125. Salaries, *etc.*, of Judges 129
126. Appointment of acting Chief Justice 129
127. Appointment of *ad hoc* Judges 129
128. Attendance of retired Judges at sittings of the Supreme Court 130
129. Supreme Court to be a court of record 130
130. Seat of Supreme Court 130
131. Original jurisdiction of the Supreme Court 130
131A. *[Repealed.]* 131
132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases 131

Article *Page*

133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters 132
134. Appellate jurisdiction of Supreme Court in regard to criminal matters 132
134A. Certificate for appeal to the Supreme Court 133
135. Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court 134
136. Special leave to appeal by the Supreme Court 134
137. Review of judgments or orders by the Supreme Court 137
138. Enlargement of the jurisdiction of the Supreme Court 137
139. Conferment on the Supreme Court of powers to issue certain writs 138
139A. Transfer of certain cases 138
140. Ancillary powers of Supreme Court 138
141. Law declared by Supreme Court to be binding on all courts 138
142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, *etc.* 140
143. Power of President to consult Supreme Court 141
144. Civil and judicial authorities to act in aid of the Supreme Court 141
144A. *[Repealed.]* 141
145. Rules of court, *etc.* 141
146. Officers and servants and the expenses of the Supreme Court 142
147. Interpretation 143

CHAPTER V — COMPTROLLER AND AUDITOR-GENERAL OF INDIA

148. Comptroller and Auditor-General of India 143
149. Duties and powers of the Comptroller and Auditor-General 144
150. Form of accounts of the Union and of the States 144
151. Audit reports 144

PART VI

THE STATES

CHAPTER I — GENERAL

152. Definition 144

CHAPTER II — THE EXECUTIVE

The Governor

153. Governors of States 144
154. Executive power of State 145
155. Appointment of Governor 145
156. Term of office of Governor 145
157. Qualifications for appointment as Governor 145
158. Conditions of Governor's office 145
159. Oath or affirmation by Governor 145
160. Discharge of the functions of the Governor in certain contingencies 146

Article		Page
161.	Power of Governor to grant pardons, *etc.*, and to suspend, remit or commute sentences in certain cases	146
162.	Extent of executive power of State	146
	Council of Ministers	
163.	Council of Ministers to aid and advise Governor	147
164.	Other provisions as to Ministers	148
	The Advocate-General for the State	
165.	Advocate-General for the State	148
	Conduct of Government Business	
166.	Conduct of business of the Government of a State	148
167.	Duties of Chief Minister as respects the furnishing of information to Governor, *etc.*	149
	Individual officers	
	CHAPTER III — THE STATE LEGISLATURE	
	General	
168.	Constitution of Legislatures in States	150
169.	Abolition or creation of Legislative Councils in States	150
170.	Composition of the Legislative Assemblies	150
171.	Composition of the Legislative Councils	151
172.	Duration of State Legislatures	152
173.	Qualification for membership of the State Legislature	152
174.	Sessions of the State Legislature, prorogation and dissolution	152
175.	Right of Governor to address and send messages to the House or Houses	153
176.	Special address by the Governor	153
177.	Rights of Ministers and Advocate-General as respects the Houses	154
	Officers of the State Legislature	
178.	The Speaker and Deputy Speaker of the Legislative Assembly	154
179.	Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker	154
180.	Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker	154
181.	The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration	155
182.	The Chairman and Deputy Chairman of the Legislative Council	155
183.	Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman	155
184.	Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman	155
185.	The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration	155
186.	Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman	156
187.	Secretariat of State Legislature	156

Article *Page*

Conduct of Business

188. Oath or affirmation by members 156
189. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum 156

Disqualifications of Members

190. Vacation of seats 157
191. Disqualifications for membership 157
192. Decision on questions as to disqualifications of members 158
193. Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified 158

Powers, Privileges and Immunities of State Legislatures and their Members

194. Powers, privileges, *etc.*, of the House of Legislatures and of the members and committees thereof 159
195. Salaries and allowances of members 159

Legislative Procedure

196. Provisions as to introduction and passing of Bills 159
197. Restriction on powers of Legislative Council as to Bills other than Money Bills 160
198. Special procedure in respect of Money Bills 160
199. Definition of "Money Bills" 161
200. Assent to Bills 161
201. Bills reserved for consideration 162

Procedure in Financial Matters

202. Annual financial statement 162
203. Procedure in Legislature with respect to estimates 163
204. Appropriation Bills 163
205. Supplementary, additional or excess grants 164
206. Votes on account, votes of credit and exceptional grants 164
207. Special provisions as to financial Bills 164

Procedure Generally

208. Rules of procedure 165
209. Regulation by law of procedure in the Legislature of the State in relation to financial business 165
210. Language to be used in the Legislature 165
211. Restriction on discussion in the Legislature 166
212. Courts not to inquire into proceedings of the Legislature 166

CHAPTER IV— LEGISLATIVE POWER OF THE GOVERNOR

213. Power of Governor to promulgate Ordinances during recess of Legislature 167

CHAPTER V — THE HIGH COURTS IN THE STATES

214. High Courts for States 168
215. High Courts to be courts of record 168
216. Constitution of High Courts 168
217. Appointment and conditions of the office of a Judge of a High Court 168

Article *Page*

218. Application of certain provisions relating to Supreme Court to High Courts 170
219. Oath or affirmation by Judges of High Courts 170
220. Restriction on practice after being a permanent Judge 170
221. Salaries *etc.*, of Judges 170
222. Transfer of a Judge from one High Court to another 170
223. Appointment of acting Chief Justice 171
224. Appointment of additional and acting Judges 171
224A. Appointment of retired Judges at sittings of High Courts 171
225. Jurisdiction of existing High Courts 172
226. Power of High Courts to issue certain writs 172
226A. *[Repealed.]* 198
227. Power of superintendence over all courts by the High Court 198
228. Transfer of certain cases to High Court 200
228A. *[Repealed.]* 200
229. Officers and servants and the expenses of High Courts 200
230. Extension of jurisdiction of High Courts to Union territories 201
231. Establishment of a common High Court for two or more States 201

CHAPTER VI — SUBORDINATE COURTS

233. Appointment of district judges 201
233A. Validation of appointments of, and judgments, *etc.*, delivered by, certain district judges 201
234. Recruitment of persons other than district judges to the judicial service 202
235. Control over subordinate courts 202
236. Interpretation 202
237. Application of the provisions of this Chapter to certain class or classes of magistrates 203

PART VII.—[Repealed.]

PART VIII

THE UNION TERRITORIES

239. Administration of Union territories 203
239A. Creation of local Legislatures or Council of Ministers or both for certain Union territories 203
239AA. Special provisions with respect to Delhi 203
239AB. Provisions in case of failure of constitutional machinery 205
239B. Power of administrator to promulgate Ordinances during recess of Legislature 205
240. Power of President to make regulations for certain Union territories 206
241. High Courts for Union territories 207
242. *[Repealed.]* 208

Article *Page*

PART IX

THE PANCHAYATS

243. Definitions 208
243A. Gram Sabha 208
243B. Constitution of Panchayats 208
243C. Composition of Panchayats 208
243D. Reservation of seats 209
243E. Duration of Panchayats, *etc.* 210
243F. Disqualifications for membership 210
243G. Powers, authority and responsibilities of Panchayats 211
243H. Powers to impose taxes by, and funds of, the Panchayats 211
243I. Constitution of finance Commissions to review financial position 211
243J. Audit of accounts of Panchayats 212
243K. Elections to the Panchayats 212
243L. Application to Union territories 212
243M. Part not to apply to certain areas 212
243N. Continuance of existing laws and Panchayats 213
243O. Bar to interference by courts in electoral matters 213

Election process (Gram Panchayats)

PART IX A

THE MUNICIPALITIES

243P. Definitions 214
243Q. Constitution of Municipalities 214
243R. Composition of Municipalities 214
243S. Constitution and composition of wards Committees, *etc.* 215
243T. Reservation of seats 215
243U. Duration of Municipalities, *etc.* 216
243V. Disqualifications for membership 216
243W. Powers, authority and responsibilities of Municipalities, *etc.* 217
243X. Power to impose taxes by, and funds, of, the Municipalities 217
243Y. Finance Commission 217
243Z. Audit of accounts of Municipalities 218
243ZA. Elections to the Municipalities 218
243ZB. Application to Union territories 218
243ZC. Part not to apply to certain areas 218
243ZD. Committee for district planning 218
243ZE. Committee for Metropolitan Planning 219
243ZF. Continuance of existing laws and Municipalities 220
243ZG. Bar to interference by courts in electoral matters 220

Article *Page*

PART X

THE SCHEDULED AND TRIBAL AREAS

244. Administration of Scheduled Areas and Tribal Areas 220
244A. Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefor 221

PART XI

RELATIONS BETWEEN THE UNION AND THE STATES

CHAPTER I — LEGISLATIVE RELATIONS

Distribution of Legislative Powers

245. Extent of laws made by Parliament and by the Legislatures of States 222
246. Subject-matter of laws made by Parliament and by the Legislatures of States 224
247. Power of Parliament to provide for the establishment of certain additional courts 228
248. Residuary powers of legislation 228
249. Power of Parliament to legislate with respect to a matter in the State List in the national interest 228
250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation 228
251. Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States 229
252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State 229
253. Legislation for giving effect to international agreements 229
254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States 229
255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only 231

CHAPTER II — ADMINISTRATIVE RELATIONS

General

256. Obligation of States and the Union 232
257. Control of the Union over States in certain cases 232
257A. *[Repealed.]* 232
258. Power of the Union to confer powers, *etc.*, on States in certain cases 233
258A. Power of the States to entrust functions to the Union 233
259. *[Repealed.]* 233
260. Jurisdiction of the Union in relation to territories outside India 233
261. Public acts, records and judicial proceedings 233

Disputes relating to Waters

262. Adjudication of disputes relating to waters of inter-State rivers or river valleys 233

Co-ordination between States

263. Provisions with respect to an inter-State Council 234

Article *Page*

PART XII

FINANCE, PROPERTY, CONTRACTS AND SUITS

CHAPTER I — FINANCE

General

264. Interpretation 235
265. Taxes not to be imposed save by authority of law 235
266. Consolidated Funds and public accounts of India and of the States 235
267. Contingency Fund 236

Distribution of Revenues between the Union and the States

268. Duties levied by the Union but collected and appropriated by the States 236
269. Taxes levied and collected by the Union but assigned to the States 236
270. Taxes levied and collected by the Union and distributed between the Union and the States 237
271. Surcharge on certain duties and taxes for purposes of the Union 238
272. Taxes which are levied and collected by the Union and may be distributed between the Union and the States 238
273. Grants in lieu of export duty on jute and jute products 238
274. Prior recommendation of President required to Bills affecting taxation in which States are interested 239
275. Grants from the Union to certain States 239
276. Taxes on professions, trades, callings and employments 240
277. Savings 240
278. *[Repealed.]* 241
279. Calculation of "net proceeds", *etc.* 241
280. Finance Commission 241
281. Recommendations of the Finance Commission 241

Miscellaneous Financial Provisions

282. Expenditure defrayable by the Union or a State out of its revenues 241
283. Custody, *etc.* of Consolidated Funds, Contingency Funds and moneys credited to the public accounts 242
284. Custody of suitors' deposits and other moneys received by public servants and courts 242
285. Exemption of property of the Union from State taxation 242
286. Restrictions as to imposition of tax on the sale or purchase of goods 243
287. Exemption from taxes on electricity 243
288. Exemption from taxation by States in respect of water or electricity in certain cases 244
289. Exemption of property and income of a State from Union taxation 244
290. Adjustment in respect of certain expenses and pensions 244
290A. Annual payment to certain Devaswom Funds 245
291. *[Repealed.]* 245

CHAPTER II — BORROWING

292. Borrowing by the Government of India 245

Article		*Page*
293.	Borrowing by States	245
	CHAPTER III— PROPERTY, CONTRACTS, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS	
294.	Succession to property, assets, rights, liabilities and obligations in certain cases	246
295.	Succession to property, assets, rights, liabilities and obligations in other cases	246
296.	Property accruing by escheat or lapse or as *bona vacantia*	246
297.	Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union	247
298.	Power to carry on trade, *etc.*	247
299.	Contracts	248
300.	Suits and proceedings	249
	CHAPTER IV — RIGHT TO PROPERTY	
300A.	Persons not to be deprived of property save by authority of law	250
	PART XIII	
	TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA	
301.	Freedom of trade, commerce and intercourse	250
302.	Power of Parliament to impose restrictions on trade, commerce and intercourse	251
303.	Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce	251
304.	Restrictions on trade, commerce and intercourse among States	251
	Regulation and Prohibition must be distinguished from each other	
305.	Saving of existing laws and laws providing for State monopolies	252
306.	*[Repealed.]*	253
307.	Appointment of authority for carrying out the purposes of articles 301 to 304	253
	PART XIV	
	SERVICES UNDER THE UNION AND THE STATES	
	CHAPTER I — SERVICES	
308.	Interpretation	253
309.	Recruitment and conditions of service of persons serving the Union or a State	253
310.	Tenure of office of persons serving the Union or a State	261
311.	Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State	262
312.	All-India Services	269
312A.	Power of Parliament to vary or revoke conditions of service of officers of certain services	269
313.	Transitional provisions	270
314.	*[Repealed.]*	270

Article *Page*

CHAPTER II — PUBLIC SERVICE COMMISSION

315. Public Service Commissions for the Union and for the States 270
316. Appointment and term of office of members 271
317. Removal and suspension of a member of a Public Service Commission 272
318. Power to make regulations as to conditions of service of members and staff of the Commission 273
319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members 273
320. Functions of Public Service Commissions 274
321. Power to extend functions of Public Service Commissions 276
322. Expenses of Public Service Commission 276
323. Reports of Public Service Commissions 276

PART XIVA

TRIBUNALS

323A. Administrative tribunals 276
323B. Tribunals for other matters 278

PART XV

ELECTIONS

324. Superintendence, direction and control of elections to be vested in an Election Commission 280
325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex 281
326. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage 281
327. Power of Parliament to make provision with respect to elections to Legislatures 281
328. Power of Legislature of a State to make provision with respect to elections to such Legislature 282
329. Bar to interference by courts in electoral matters 282
329A. *[Repealed.]* 282

PART XVI

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People 282
331. Representation of the Anglo-Indian community in the House of the People 283
332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States 283
333. Representation of the Anglo-Indian community in the Legislative Assemblies of the States 284
334. Reservation of seats and special representation to cease after fifty years 285
335. Claims of Scheduled Castes and Scheduled Tribes to services and posts 285
336. Special provision for Anglo-Indian community in certain services 285

Article *Page*

337. Special provision with respect to educational grants for the benefit of Anglo-Indian community 286
338. Special Officer for Scheduled Castes and Scheduled Tribes, *etc.* 286
339. Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes 287
340. Appointment of a Commission to investigate the conditions of backward classes 288
341. Scheduled Castes 288
342. Scheduled Tribes 289

PART XVII

OFFICIAL LANGUAGE

CHAPTER I — LANGUAGE OF THE UNION

343. Official language of the Union 290
344. Commission and Committee of Parliament on official language 291

CHAPTER II — REGIONAL LANGUAGES

345. Official language or languages of a State 292
346. Official language for communication between one State and another or between a State and the Union 292
347. Special provision relating to language spoken by a section of the population of a State 292

CHAPTER III — LANGUAGE OF THE SUPREME COURT, HIGH COURTS, *ETC.*

348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, *etc.* 292
349. Special procedure for enactment of certain laws relating to language 293

CHAPTER IV — SPECIAL DIRECTIVES

350. Language to be used in representations for redress of grievances 293
350A. Facilities for instruction in mother-tongue at primary stage 293
350B. Special Officer for linguistic minorities 293
351. Directive for development of the Hindi language 293

PART XVIII

EMERGENCY PROVISIONS

352. Proclamation of Emergency 294
353. Effect of Proclamation of Emergency 295
354. Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation 296
355. Duty of the Union to protect States against external aggression and internal disturbance 296
356. Provisions in case of failure of constitutional machinery in State 296
357. Exercise of legislative powers under Proclamation issued under article 356 298
358. Suspension of provisions of article 19 during emergencies 300

Article		Page
359.	Suspension of the enforcement of the rights conferred by Part III during emergencies	300
359A.	*[Repealed.]*	301
360.	Provisions as to financial emergency	301

PART XIX

MISCELLANEOUS

361.	Protection of President and Governors and Rajpramukhs	302
361A.	Protection of publication of proceedings of Parliament and State Legislature	303
362.	*[Repealed.]*	303
363.	Bar to interference by courts in disputes arising out of certain treaties, agreements, *etc.*	303
363A.	Recognition granted to Rulers of Indian States to cease and privy purses to be abolished	304
364.	Special provisions as to major ports and aerodromes	304
365.	Effect of failure to comply with, or to give effect to, directions given by the Union	304
366.	Definitions	304
367.	Interpretation	308

PART XX

AMENDMENT OF THE CONSTITUTION

368.	Power of Parliament to amend the Constitution and procedure therefor	308

PART XXI

TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS

369.	Temporary power to Parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List	310
370.	Temporary provisions with respect to the State of Jammu and Kashmir	310
371.	Special provision with respect to the States of Maharashtra and Gujarat	312
371A.	Special provision with respect to the State of Nagaland	312
371B.	Special provision with respect to the State of Assam	315
371C.	Special provision with respect to the State of Manipur	315
371D.	Special provisions with respect to the State of Andhra Pradesh	315
371E.	Establishment of Central University in Andhra Pradesh	318
371F.	Special provisions with respect to the State of Sikkim	318
371G.	Special provision with respect to the State of Mizoram	320
371H.	Special provision with respect to the State of Arunachal Pradesh	321
371-I.	Special provision with respect to the State of Goa	321
372.	Continuance in force of existing laws and their adaptation	321
372A.	Power of the President to adapt laws	323
373.	Power of President to make order in respect of persons under preventive detention in certain cases	323
374.	Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before His Majesty in Council	323

Article *Page*

375. Courts, authorities and officers to continue to function subject to the provisions of the Constitution 324
376. Provisions as to Judges of High Courts 324
377. Provisions as to Comptroller and Auditor-General of India 324
378. Provisions as to Public Service Commissions 325
378A. Special provisions as to duration of Andhra Pradesh Legislative Assembly 325
379-391. *[Repealed.]* 325
392. Power of the President to remove difficulties 325

PART XXII

SHORT TITLE, COMMENCEMENT, AUTHORITATIVE TEXT IN HINDI AND REPEALS

393. Short title 326
394. Commencement 326
394A. Authoritative text in the Hindi language 326
395. Repeals 326

FIRST SCHEDULE 327
SECOND SCHEDULE 333
THIRD SCHEDULE 338
FOURTH SCHEDULE 340
FIFTH SCHEDULE 342
SIXTH SCHEDULE 345
SEVENTH SCHEDULE 363
EIGHTH SCHEDULE 374
NINTH SCHEDULE 375
TENTH SCHEDULE 388
ELEVENTH SCHEDULE 392
TWELFTH SCHEDULE 393
Subject Index 394

THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [1][SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC] and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the [2][unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Notes on Preamble

Basic structure

The objectives specified in the Preamble contain the basic structure of our Constitution, which cannot be amended in exercise of the power under article 368 of the Constitution. For the theory of "basic structure". *See* the following judgments of the Supreme Court:

(i) *Keshavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461, paragraphs 292, 437, 599, 682 and 1164.

(ii) *Indira Gandhi* v. *Raj Narain*, AIR 1975 SC 2299, paragraphs 251-252 (Khanna, J.), paragraphs 664, 665 and 691 (Chandrachud, J.), paragraphs 555 and 575 (Beg, J.) (3 Judges out of 5).

(iii) *Minerva Mills Ltd.* v. *Union of India*, AIR 1980 SC 1789 (majority).

Pluralism is the keystone of Indian culture and religious tolerance is the bedrock of Indian secularism. It is based on the belief that all religions are equally good and efficacious pathways to perfection of God realisation; *Valsamma Paul* v. *Cochin University*, AIR 1996 SC 1011, paragraph 25.

Articles 14(4) and 16(4) of the Constitution intend to remove social and economic inequality to make equal opportunities available, In reality the right to social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular articles 14, 15, 16, 21, 38, 39 and 46 are to make the equality of the life of the poor, disadvantaged and disabled citizens of the society, meaningful; *Valsamma Paul* v. *Cochin University*, AIR 1996 SC 1011, paragraph 6.

Interpretation by Preamble

The Preamble may be invoked to determine the ambit of—

(a) Fundamental rights; and

(b) Directive principles of State Policy.

See the undermentioned decisions:

(i) *Keshavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461.

---

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 2, for "SOVEREIGN DEMOCRATIC REPUBLIC" (w.e.f. 3-1-1977).

2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 2, for "unity of the Nation" (w.e.f. 3-1-1977).

(ii) *Chandra Bhawan* v. *State of Mysore*, AIR 1970 SC 2042, paragraph 13.

(iii) *Dharwad District P.W.D. Leterate Daily Wage Employees Association* v. *State of Karnataka*, (1990) 2 SCC 396, paragraphs 14-27.

A living law

Constitution is not to be construed as a mere law, but as the machinery by which laws are made. A Constitution is a living and organic thing which, of all instruments has the greatest claim to be construed broadly and liberally; *Goodyear India* v. *State of Haryana*, AIR 1990 SC 781, paragraph 17.

Powers

Powers must be derived from specific provisions of the Constitution; *Synthetics & Chemicals Ltd.* v. *State of Uttar Pradesh*, (1990) SCC 109 (7 Judges Bench).

Ideals

The ideals of socialism, secularism and democracy are elaborated by the enacting provisions. *See* the undermentioned decisions:

(i) *Bhim Singhji* v. *Union of India*, AIR 1981 SC 234, paragraphs 39, 71-72.

(ii) *State of Kerala* v. *Thomas*, AIR 1976 SC 490, 531; *Waman Rao* v. *Union of India*, AIR 1981 SC 271.

The word "socialist", read with articles 14 and 16, enabled the Court to deduce a fundamental right to equal pay for equal work, the same word, when read with article 14, enabled the Court to strike down a statute which failed to achieve the socialist goal to the fullest extent. Undermentioned decisions are relevant on this point:

(i) *Excel Wear* v. *Union of India*, AIR 1979 SC 25, paragraph 24.

(ii) *Atam Prakash* v. *State of Haryana*, AIR 1986 SC 859, paragraph 5.

(iii) *Randhir* v. *Union of India*, AIR 1982 SC 879, paragraph 8.

(iv) *Nakara* v. *Union of India*, AIR 1983 SC 130, paragraphs 33-34.

(v) *Minerva Mills Ltd.* v. *Union of India*, AIR 1980 SC 1789, paragraphs 62 and 111.

(vi) *Dharwad Employees* v. *State of Karnataka*, (1990) 2 SCC 396, paragraphs 14-17.

Social justice

Social justice enables the courts to uphold legislation—

(a) to remove economic unequalities;

(b) to provide a decent standard of living to the working people;

(c) to protect the interests of the weaker sections of the society.

See the undermentioned decisions:

(i) *Lingappa* v. *State of Maharashtra*, AIR 1985 SC 389, paragraphs 14, 16, 18 and 20.

(ii) *Nakara* v. *Union of India*, AIR 1983 SC 130, paragraphs 33-34.

(iii) *Sadhuram* v. *Polin*, AIR 1984 SC 1471, paragraphs 29, 70 and 73.

Some fundamental aspects of the Indian Constitution

The Indian Constitution, adopted by the Constituent Assembly on November 26, 1949 is a comprehensive document containing 395 articles and several Schedules. Besides dealing with the structure of Government the Constitution makes detailed provisions for the rights of citizens and other persons in a number of entrenched provisions, and for the principles to be followed by the State in the governance of the country, labelled as "Directive Principles of State Policy".

Historical and geographical factors have been responsible for the build of the Constitution, which is the second longest Constitution in the world. The framers of the Constitution were keen to preserve the democratic values to which Indians had attached the highest importance in their struggle for freedom. But they were also keen to make provisions considered to be necessary in the light of the social and economic backwardness of certain sections of society. They had also before them the precedent of the Government of India Act, 1935 whose detailed provisions were found suitable for adoption in the interests of continuity and certainty. Some precautions for the constitutional image being distorted or being impaired in its essential features, were also required. All this has contributed to the length of the Indian Constitution.

Sources of the Constitution

Sources of the Indian Constitution can be best explained with reference to its principal parts. The structural part of the Constitution is, to a large extent, derived from the Government of India Act, 1935. The philosophical part of the Constitution has other sources. Part III on Fundamental Rights partly derives its inspiration from the Bill of Rights, enshrined in the American Constitution, and so also Part IV on Directive Principles of State Policy from the Irish Constitution. The political part (the principle of Cabinet Government and the relations between the executive and the Legislature) have been largely drawn from the British experience.

The Union-State relations find a similarity in the Act of 1935 and also in the Canadian Constitution, though the expanded concurrent list in the Seventh Schedule has a model in the Australian Constitution. Part XIII, dealing with trade, commerce and intercourse, also appears to derive inspiration from the Australian Constitution. Some indigenous institutions like "panchayats" have been specifically encouraged and new ideals, such as, promotion of international peace and security, have been woven into the fabric of the Constitution. The Constitution specifically provides for the privileges of the members of Parliament and of the State Legislature, to some extent following the Australian model.

The Nature of the polity (the Preamble)

The preamble declares India to be a sovereign, socialist, secular, democratic republic. It is declared that the Constitution has been "given by the people to themselves", thereby affirming the republican character of the polity and the sovereignty of the people. The democratic character of the Indian polity is illustrated by the provisions conferring, on the adult citizens, the right to vote, and by the provisions for elected representatives and responsibility of the executive to the Legislature.

The socialist character of the Indian Constitution is also emphasised in the Preamble, which spells out the aspiration of the people to secure to all citizens, social, economic and political justice. The Preamble also affirms a determination to secure liberty of thought, expression, belief, faith and worship and equality of status and opportunity, and to promote amongst the people a feeling of fraternity, ensuring the dignity of the individual and the unity of the Nation.

Being a sovereign State, India is free from any type of external control. It can acquire foreign territory and, if necessary, cede a part of the territory in favour of a foreign State, subject to certain constitutional requirements; *Maganbhai Ishwarbhai Patel* v. *Union of India*, (1970) 3 SCC 100.

The Preamble is part of the Constitution; *Keshvananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461.

Secularism

The Constitution of India stands for a secular State, The State has no official religion. Secularism pervades its provisions which give full opportunity to all persons to profess, practise and propagate and religion of their choice. The Constitution not only guarantees a person's freedom of religion and conscience, but also ensures freedom for one who has no religion, and it

scrupulously restrains the State from making any discrimination on grounds of religion. A single citizenship is assured to all persons irrespective of their religion.

Fundamental law

The Constitution operates as a fundamental law. The governmental organs owe their origin to the Constitution and derive their authority from, and discharge their responsibilities within the framework of the Constitution. The Union Parliament and the State Legislature are not sovereign, The validity of a law, whether Union or ,State, is judged with reference to their respective jurisdictions as defined in the Constitution. The Judiciary has power to declare a law unconstitutional, if the law is found to have contravened any provision of the Constitution.

The Indian Union

The Constitution describes India as a Union of States, thereby implying the indestructible nature of its unity. No unit constituting the Indian Union can secede from it [VII Constituent Assembly Debates 43]. The country is divided into several units, known as States or Union Territories, and the Constitution lays down not only the structure of the Union Government, but also the structure of the State Governments.

Federal structure

The Indian Constitution is basically federal in form and is marked by the traditional characteristics of a federal system, namely, supremacy of the Constitution, division of power between the Union and State Governments, existence of an independent judiciary and a rigid procedure for the amendment of the Constitution. It establishes a duly polity, *with* clearly defined spheres of authority between the Union and the States, to be exercised in fields assigned to them respectively. There is an independent judiciary to determine issues between the Union and the States, to be exercised in fields assigned to them respectively. There is an independent judiciary to determine issues between the Union and the States, or between one State and another. An amendment in the respective jurisdictions of the Union and the States can be brought about only by invoking a special procedure in Parliament and ratification by a majority of the States. However, there are marked differences between the American federation (which is the classical federal model) and the Indian federation. First, in America, there is a dual citizenship, whereas, in India, there is only one citizenship. Indian citizens, wherever they reside, are equal in the eye of the law. Secondly, the States in America have a right to make their own constitutions, whereas no such power is given to the States in India. Thirdly, the Indian Constitution exhibits a centralising tendency in several of its provisions, *e.g.*, the adoption of a lengthy Concurrent List, the power of Parliament to re-organise the political structure of the country, supremacy of Parliament over State Legislatures if there is a direct conflict between their respective jurisdictions, vesting of the residuary legislative power in Parliament, and powers of Governors to reserve Bills for the consideration of the President of the Republic. Fourthly, in certain circumstances, the Union is empowered to supersede the authority of the State or to exercise powers otherwise vested in the States.

Sovereign

The word 'sovereign' means that the State has power to legislate on any subject in conformity with constitutional limitations; *Synthetics* v. *State of Uttar Pradesh*, (1990) 1 SCC 109, paragraphs 35-37, 56-64, 106-108.

Contracts are subject to Constitution; *D.T.C.* v. *Mazdoor Congress*, AIR 1991 SC 101 (7 Judges).

Parents patriae

The doctrine of *parents patriae* can be invoked by reason of sovereignty; *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613, paragraphs 35-37, 63, 74 and 10 (CB).

Preamble as basic structure

The objectives specified in the Preamble contain the basic structure of the Constitution.

(i) *Keshavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461, paragraphs 292, 599, 682, 1164, 1437 (majority view).

(ii) *Excel Wear* v. *Union of India*, AIR 1979 SC 25, paragraph 24.

The Preamble may therefore be pressed into service to interpret the provisions as to:

(i) fundamental rights — *Keshavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461.

(ii) directive principles — *Chandra Bhavan* v. *State of Mysore*, AIR 1970 SC 2042, paragraph 13.

Secularism

Dr. Radhakrishnan, former President of India, has in his book *Recovery of Faith*, page 184, explained secularism in this country, as follows:

> "When India is said to be a Secular State, it does not mean that we reject the reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that the State assumes divine prerogatives ..... We hold that not one religion should be given preferential status ..... This view of religious impartiality, or comprehension and forbearance, has a prophetic role to play within the National and International life."

Most important components of secularism are as under:

(i) *samanata* (equality) is incorporated in article 14;

(ii) prohibition against discrimination on the ground of religion, caste, *etc.*, is incorporated in articles 15 and 16;

(iii) freedom of speech and expression and all other important freedoms of all the citizens are conferred under articles 19 and 21;

(iv) right to practise religion is conferred under articles 25 to 28;

(v) fundamental duty of the State to enact uniform civil laws treating all the citizens as equal, is imposed by article 44;

(vi) sentiment of majority of the people towards the cow and against its slaughter was incorporated in articles 48. [*See* Basu, Constitutional Law of India].

An eminent writer [Basu, Constitutional Law of India, 1998, page 4, footnote] has described the expression "secular" as vague. He has further stated that it would be a correct summary of the provisions of articles 25-30 to say that the expression "Republic" as qualified by the expression "secular" means a republic in which there is equal respect for all religions.

This was the proposal in the 45th Amendment Bill, which was passed by the Lok Sabha but defeated in the Rajya Sabha, because of oppositions of the Congress Party. Secularism (whatever it may mean) is a basic feature of the Constitution. *S.R. Bommai* v. *Union of India*, (1994) 3 SCC 1, paragraph 153.

PART I

THE UNION AND ITS TERRITORY

1. Name and territory of the Union.—(1) India, that is Bharat, shall be a Union of States.

[1][(2) The States and the territories thereof shall be as specified in the First Schedule].

(3) The territory of India shall comprise—

(a) The territories of the States;

[2][(b) the Union territories specified in the First Schedule; and]

(c) such other territories as may be acquired.

Notes on Article 1

The Union of India is a federal Union, with a distribution of powers, of which the judiciary is the interpreter. Although there has been considerable controversy whether India is or is not a federation and although some writers have called it "quasi federal", it would seem that essentially the Indian Constitution is a federal one; *Special Reference of 1956*, AIR 1965 SC 745, 762.

Territory of India

The expression "territory of India", wherever used, means the territory which, for the time being, falls within article 1(3). *See* the undermentioned decisions:

(i) *Amar Singh* v. *State of Rajasthan*, AIR 1955 SC 504.

(ii) *Masthan Sahib* v. *Chief Commissioner, Pondicherry*, AIR 1962 SC 797.

Territorial waters

Section 3(2) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 now provides that the limit of the territorial waters is the line, every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate base line. Another notification of the Government dated 15 January, 1977 has extended the "exclusive economic zone" of India upto a distance of 200 nautical miles into the sea from the shore base line. This has been done under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, passed after the Constitution (40th Amendment) Act, 1976.

Action subsequent to acquisition

Foreign territories which become part of India on acquisition may (i) either be admitted into the Union, or (ii) constituted into new States under article 2, or (iii) merged into an existing State under article 3(a) or 3(b), or (iv) formed into a Union territory. Of course, a foreign territory would not come under article 1(3)(c) until there is legal transfer of territory to India, so as to constitute its "acquisition" in international law. *See* the undermentioned decisions:

(i) *Harivansh* v. *State of Maharashtra*, (1971) 2 SCC 54, 56.

(ii) *Masthan Sahib* v. *Chief Commissioner, Pondicherry*, AIR 1962 SC 797.

(iii) *Amar Singh* v. *State of Rajasthan*, AIR 1955 SC 504.

---

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 2, for clause (2).
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 2, for sub-clause (b).

Acquisition of territory

Acquisition of foreign territory does not fall within article 1. It is governed by international law; *Jose De Costa* v. *Bascora*, AIR 1975 SC 1843, paragraph 24.

Law applicable to acquired territory

On acquisition of territory, the pre-acquisition laws and the rights acquired therein may continue, only if the new Government chooses to recognise them unequivocally; *Vinod Kumar* v. *Gangadhar*, AIR 1981 SC 1946, paragraphs 29-30.

2. Admission or establishment of new States.—Parliament may by law admit into the Union, or establish, new States on such terms and conditions, as it thinks fit.

[1][**2A. Sikkim to be associated with the Union.**—[*Rep. by the Constitution (Thirty-sixth Amendment) Act, 1975, sec. 5 (w.e.f. 26-4-1975).*]]

3. Formation of new States and alteration of areas, boundaries or names of existing States.—Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

[2][Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States [3][* * *], the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.]

[4][*Explanation I.*—In this article, in clauses (a) to (e), "State" includes a Union territory, but in the proviso, "State" does not include a Union territory.

Explanation II.—The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.]

Notes on Article 3

Effects of re-organisation of territory on existing laws

The principles relating to a change of sovereignty in international law are not applicable to a re-organisation of territory of a State under article 3. When such an adjustment or re-organisation of territories takes place, the existing laws as well as administrative orders in a particular territory

---

1. Ins. by the Constitution (Thirty-fifth Amendment) Act, 1974, sec. 2 (w.e.f. 1-3-1975).
2. Subs. by the Constitution (Fifth Amendment) Act, 1955, sec. 2, for the proviso.
3. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
4. Ins. by the Constitution (Eighteenth Amendment) Act, 1966, sec. 2.

continue to be in force and continue to be binding upon the successor State, so long as they are not modified, changed or repudiated by the successor State. *See* the undermentioned decision:

State of Punjab v. *Balbir*, AIR 1977 SC 629, paragraphs 13-14.

Reference of Bills

Once the original Bill is referred to the State or States, the purpose of the proviso is served and no fresh reference is required every time an amendment to the Bill is moved and accepted according to the rules of procedure in Parliament. Parliament is not bound to accept or act upon the views of the State Legislature, even if those views are received in time; *Babulal* v. *State of Bombay*, AIR 1960 SC 51, 54.

4. Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.—(1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

PART II

CITIZENSHIP

5. Citizenship at the commencement of the Constitution.—At the commencement of this Constitution every person who has his domicile in the territory of India and—

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years preceding such commencement,

shall be a citizen of India.

Notes on Article 5

Every person

The expression "every person" includes—

(a) a prisoner;

(b) a member of the armed forces (but subject to article 33).

See the undermentioned decisions:

(i) *State of Maharashtra* v. *Prabhakar*, AIR 1966 SC 424, 426.

(ii) *Sunil Batra* v. *Delhi Admn.*, AIR 1978 SC 1675.

(iii) *Lt. Col. Prithi Pal Singh Bedi* v. *Union of India*, AIR 1982 SC 1413, paragraph 45.

One domicile

Under the Indian Constitution, there is only one domicile *viz*, the domicile of the country and there is no separate domicile for a State; *Dr. Pradeep Jain* v. *Union of India*, AIR 1984 SC 1420, paragraphs 8-9.

6. Rights of citizenship of certain persons who have migrated to India from Pakistan.—Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

7. Rights of citizenship of certain migrants to Pakistan.—Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

8. Rights of citizenship of certain persons of Indian origin residing outside India.—Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens.—No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

Notes on Article 9

Obtaining passport

Mere proof of the fact that the person has obtained a passport from a foreign country is not

sufficient to sustain an order for deportation or prosecution, unless there has been a decision of the Central Government under section 9(2) of the Citizenship Act, 1955. The inquiry by the Central Government under section 9(2) of the Citizenship Act is quasi-judicial. *See* the undermentioned decisions:

(i) *Government of Andhra Pradesh* v. *Syed Md.*, AIR 1962 SC 1778; *State of Uttar Pradesh* v. *Roshan*, (1969) 2 SCWR 232, 233.

(ii) *State of Uttar Pradesh* v. *Rahimatullah*, AIR 1971 SC 1382; *State of Gujarat* v. *Ibrahim*, AIR 1974 SC 645, paragraph 8.

(iii) *Ayub Khan* v. *Commissioner of Police*, (1965) 2 SCR 884; *Moinuddin* v. *Government of India*, (1967) 2 SCR 401.

Section 9(2) of the Citizenship Act, 1955

The Central Government, is vested, by section 9(2) of the Citizenship Act, 1955 with exclusive jurisdiction to determine the question whether a person, who was a citizen of India, has lost that citizenship by having voluntarily acquired the citizenship of a foreign State. This question cannot be determined by any court, either by suit or in a proceeding under article 226 or under article 32 of the Constitution. If this question arises in such proceedings, the court should stay the proceedings to enable the parties to obtain the determination of the Central Government under section 9(2) of the Citizenship Act, or restrain the Government from giving effect to the order of deportation until the question under section 9(2) is determined by the Central Government.

A State Government has no jurisdiction to determine this question unless the function is delegated by the Central Government, under article 258 of the Constitution. Undermentioned decisions support the above propositions:

(i) *Government of Andhra Pradesh* v. *Syed Md.*, AIR 1962 SC 1778; *State of Uttar Pradesh* v. *Roshan*, (1969) 2 SCWR 232, 233.

(ii) *Akbar* v. *Union of India*, AIR 1962 SC 70, 72.

(iii) *Izhar Ahmed* v. *Union of India*, AIR 1962 SC 1052.

(iv) *State of Madhya Pradesh* v. *Peer Md.*, AIR 1963 SC 645, 647.

(v) *Anwar* v. *State of Jammu & Kashmir*, (1971) 3 SCC 104, 107.

10. Continuance of the rights of citizenship.—Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

11. Parliament to regulate the right of citizenship by law.—Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

PART III

FUNDAMENTAL RIGHTS

General

12. Definition.—In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Notes on Article 12

State action

The historical context in which the doctrine of "State action" evolved in the U.S. is irrelevant for India. But the principle behind the doctrine (State aid, control and regulation so impregnating a private activity as to give it the colour of "State action") is of interest to us to the limited extent to which it can be Indianised and harmoniously blended with our constitutional jurisprudence; *M.C. Mehta* v. *Union of India*, AIR 1987 SC 1086.

Local authorities: Writ by

A local authority having a legal grievance may be able to take out a writ. Thus, a writ was issued on the petition of a local authority against a public utility concern, for the latter's failure to fulfil its statutory obligation to supply power to the local authority, a consumer; *Corporation of Nagpur* v. *N.E.L. & P. Co.*, AIR 1985 Bom 498.

State

The definition of "State" is not confined to a Government Department and the Legislature, but extends to any action—administrative (Whether statutory or non-statutory), judicial or quasi-judicial, which can be brought within the fold of 'State action' being action which violates a fundamental right. *See* the undermentioned decisions:

(i) *Ramana* v. *International Airport Authority of India*, AIR 1979 SC 1628, 1638, paragraphs 14-16; *State of Punjab* v. *Raja Ram*, AIR 1981 SC 1694, paragraph 5.

(ii) *Gulam* v. *State of Uttar Pradesh*, AIR 1981 SC 2198, paragraph 23.

(iii) *Som Prakash* v. *Union of India*, AIR 1981 SC 212, paragraphs 34, 37.

Even a private body may be "State"; *Mahabir Auto Stores* v. *Indian Oil Corporation*, (1990) 3 SCC 752.

Other authorities

Judicial decisions have given a wide scope to the expression "other authorities" in article 12. The main theory evolved is that of "instrumentality or agency" of Government. This is a concept wider than a "department of the Government". It embraces every public authority exercising statutory powers, every authority created under statute and even a non-statutory authority exercising public functions.

Undermentioned decisions may be seen in this connections:

(i) *Som Prakash* v. *Union of India*, AIR 1981 SC 212; *Tajinder Singh* v. *Bharat Petroleum Corpn. Ltd.*, (1986) 4 SCC 237.

(ii) *State of Punjab* v. *Raja Ram*, (1981) 2 SCC 66 , paragraphs 9-10.

(iii) *Sukhdev* v. *Bhagatram*, AIR 1975 SC 1331, 1342.

(iv) *K.S. Ramamurthy* v. *Chief Commissioner, Pondicherry*, AIR 1963 SC 1464.

(v) *Umesh Chandra* v. *V.N. Singh*, AIR 1967 Pat 3, 9 (FB).

(vi) *Paramatma Sharan* v. *Chief Justice*, AIR 1964 Raj 13.

(vii) *Sabhajit* v. *Union of India*, AIR 1975 SC 1329; *Mysore S.R.T.C.* v. *Devraj*, AIR 1976 SC 1027, paragraph 14; *Premji Bhai* v. *Delhi Development Authority*, AIR 1980 SC 738, paragraphs 8, 9.

(viii) *Masthan Sahib* v. *Chief Commissioner, Pondicherry*, AIR 1962 SC 797.

What is, and what is not a "State" has been the subject-matter of rich case law under article 12. From the numerous decisions on the subject, a judgment of the Andhra Pradesh High Court has

culled out certain propositions; *B. Hassan Ali Khan* v. *Director of Higher Education, Andhra Pradesh*, (1987) 4 Reports 198 (Andhra Pradesh), decided on 23rd January, 1987 (Writ Petition No. 3065 of 1978). The judgment says that the essential tests to determine whether a particular institution is "other authority" within the meaning of article 12 are substantial financial aid, control by the Government, performance of public functions and entrustment of governmental activities. All of these are not essential, and, in a particular case, one or a combination of more than one of them may suffice. In the leading case of *Ajay Hasia* v. *Khalid Mujib*, AIR 1981 SC 481 (Registered Society), the Regional Engineering College was held to be a "State". P.N. Bhagwati, J. observed as under in that case:

> The constitutional philosophy of a democratic socialist republic requires the Government to undertake a multitude of socio-economic operations and the Government, having regard to the practical advantages of functioning through the legal device of a corporation embarks on myriad commercial and economic activities by resorting to the instrumentality or agency of a corporation, but this contrivance of carrying on such activities through a corporation cannot exonerate the Government from its basic obligation to respect the Fundamental Rights and not to override them. The mandate of a corporation may be adopted in order to free the Government from the inevitable constrains of red tapism and slow motion but by doing so, the Government cannot be allowed to play truant with the basic human rights. Otherwise, it would be the easiest thing for the Government to assign to a plurality of corporations almost every State business such as Post and Telegraph, TV and Radio, Rail, Road and Telephones- in short every economic activity—and thereby cheat the people of India out of the Fundamental Rights guaranteed to them.

In the above judgment of the Supreme Court, Mr. Justice Bhagwati enunciated the following test for determining whether an entity is an instrumentality or agency of the State:—

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency or Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor whether the corporation enjoys monopoly status which is the State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classified the corporation as a instrumentality or agency of Government.

(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government.

The Delhi Transport Corporation is "State"; *D.T.C.* v. *Mazdoor Congress*, AIR 1991 SC 101.

Agency outside India

An instrumentality or agency of the State having operations outside India must comply with Indian labour legislation; *Lena Khan* v. *Union of India*, AIR 1987 SC 1515: (1987) 2 SCC 402.

Examples of Authorities held to be State

The Children Aid Society should be treated as a State within the meaning of article 12, as it is undoubtedly an instrumentality of State. The society has, therefore, to regulate its activities, not

only in accordance with the statutory requirements, but also act in a manner satisfying the requirements of the constitutional provisions in articles 21 and 24, as also the Directive Principles of the State Policy; *Sheela Barse* v. *The Secretary, Children Aid Society*, AIR 1987 SC 656 (P.N. Bhagwati, C.J. and R.S. Pathak, J.).

The Rajasthan State Electricity Board is 'State' within the meaning of that expression used in article 12 of the Constitution so that is amendable to the writ jurisdiction under article 226 of the Constitution. For the same reason, it is obvious that if a case of violation of a right under article 14 of the Constitution is made out by the petitioner against the Board, then there would be no impediment in granting relief under article 226 of the Constitution; *D.C.M. Ltd.* v. *Assistant Engineer (H.M.T. Sub-division), Rajasthan State Electricity Board, Kota*, AIR 1988 Raj 64.

There are tests formulated by several cases of the Supreme Court to find out whether an institution is a "State". There cannot indeed be a straight jacket formula. It is not necessary that all the tests should be satisfied or reaching the conclusion either for or against holding an institution to be "State". In a given case, some of the features may emerge so boldly and prominently that a second view may not be possible. There may yet be other cases where the matter would be on the borderline and it would be difficult to take one or other view outright; *Tekraj* v. *Union of India*, AIR 1988 SC 469.

Private body

A private body which is an agency of the State may be a *"State"; Star Enterprises* v. *City and Industrial Development Corpn. of Maharashtra*, (1990) 3 SCC 280.

Co-operative Societies

The Co-operative Societies are not created by the Co-operative Societies Act, 1912 and they are not statutory bodies. They are only functioning in accordance with the provisions of the Act. Moreover, the Government has no shares in the Co-operative Societies. There is no deep and pervasive State Control. The management of the societies does not vest in the Government, or in the representatives of the Government Bank. The management is, under the effective control of committee elected by the members of the society. The statutory regulation or restriction in the functioning of the societies is not "an imprint of the State under article 12". Hence no writ will lie against a co-operative society governed by the Kerala Co-operative Societies Act; *P. Bhaskaran* v. *Additional Secretary, Agricultural (Co-operation) Department, Trivandrum*, AIR 1988 Ker 75.

Right to shelter

In a Supreme Court judgment, there are dicta (Sabyasachi Mukharji, J.) that shelter is one of our fundamental rights; *Prabhakaran Nair* v. *State of Tamil Nadu*, (1987) 4 SCC 231, 261, paragraph 36; AIR 1987 SC 2117.

13. Laws inconsistent with or in derogation of the fundamental rights.—(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires.—

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

[1][(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368].

Notes on Article 13

The main object of article 13 is to secure the paramountcy of the Constitution in regard to fundamental rights. The first clause relates to the laws already existing in force and declares that pre-Constitution laws are void to the extent to which they are inconsistent with the fundamental rights. The second clause relates to post-Constitution laws and prohibits the State from making a law which either takes away totally or abrogates in part a fundamental right. The expression "the State" is to be construed in conformity with article 12 as judicially interpreted. The ambit of the expression "law" is defined in article 13(3)(a) itself, so as to ensure that the paramountcy of the Constitution extends also to:—

(a) temporary laws, such as Ordinances, Acts as well as permanent laws;

(b) statutory instruments in the nature of subordinate legislation, specifically described as "order, bye-law, rule, regulation, notification" having in the territory of India the force of law;

(c) non-legislative sources of law, that is to say, custom or usage having in the territory of India the force of law.

The object of the definition in article 13 is to ensure that instruments emanating from any source of law—permanent or temporary, legislative or judgment or any other source—will pay homage to the constitutional provision relating to fundamental rights. At the same time, clause (4) seeks to ensure that a constitutional amendment does not fall within the definition of law in article 13, and its validity cannot be challenged on the ground that it violates a fundamental right. But it should be noted that fundamental rights as such, while not immune from constitutional amendment, may, in some cases, form part of the theory of basic features, enunciated in certain decisions by the Supreme Court. The chronology of important Supreme Court decisions on the subject is as under:

(i) *Golak Nath* v. *State of Punjab*, AIR 1967 SC 1643.

(ii) *Keshavanada Bharati* v. *State of Kerala*, AIR 1973 SC 1461, which, while upholding the validity of the Constitution (24th Amendment) by which article 13(4) was inserted, laid down (by majority) the theory that there were certain basic features which could not be amended under the amending power.

(iii) *Minerva Mills Ltd.* v. *Union of India*, AIR 1980 SC 1789, which declared that even though the 42nd Amendment sought to amend article 368 (relating to the amending power) there shall be no limitation whatsoever on the Constituent power of Parliament to amend, by way of addition, variation or repeal, the provisions of the Constitution under article 368, a Constitutional amendment which relates to a basic feature (*e.g.*, total exclusion of judicial review) would be void.

(iv) *Waman Rao* v. *Union of India*, AIR 1981 SC 271, paragraph 15, re-affirming the above limitation on the constituent power.

(v) *Bhim Singhji* v. *Union of India*, AIR 1981 SC 234.

(vi) *S.P. Gupta* v. *Union of India*, AIR 1982 SC 149 and *Sampath Kumar* v. *Union of India*, AIR 1987 SC 386, both being decisions which, while upholding the validity of a particular

---

1. Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, sec. 2.

amendment, impliedly proceed on the proposition that a constitutional amendment cannot override a basic feature.

Working of Act

How an Act has been worked may be looked at for assessing validity; *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613, 667.

Basic features

The "basic features" of the Constitution cannot be amended by exercising the power of amendment under article 368. The Constitution (42nd Amendment) Act, 1976, which inserted in article 368(5) a provision that there is no limitation on the constituent power of the Parliament to amend the Constitution, has been invalidated by the Supreme Court, adhering to the doctrine of basic features. Though fundamental rights, as such, are not immune from amendment *en bloc*, particular rights or parts thereof may be held as basic features. *See* the undermentioned cases:

(i) *Keshavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461, paragraphs 759, 850, 1574, 1582, 1595, 1840, 1916, 2079 (overruling *Golaknath Case*).

(ii) *Minerva Mills Ltd.* v. *Union of India*, AIR 1980 SC 1789.

(iii) *Waman Rao* v. *Union of India*, AIR 1981 SC 271, paragraph 15.

(iv) *Srinivasa* v. *State of Karnataka*, AIR 1987 SC 1518.

Severability

When a particular provision of an enactment (or of subordinate legislation) is found to be void as violating a constitutional provision (*e.g.*, a provision as to fundamental rights) the question may arise as to what is the impact of such finding on the other provisions of the Act, *etc.* The answer to this question depends on the answer to another question, namely:— Is the other provision so intimately connected with the void provision—

(a) that each is inextricably to bound up with the other, or

(b) it can be assumed that the legislature would not have enacted the one without enacting the other? If the answer under (a) or (b) above is in the affirmative then the other provision also becomes void.

(i) *State of Bihar* v. *Kameshwar Singh*, AIR 1952 SC 252, 277.

(ii) *Jalan Trading Co.* v. *Mill Mazdoor Sabha*, AIR 1967 SC 691, 711.

(iii) *Kihota* v. *Zachilhu*, (1992) Supp (2) SCC 651.

Constitution Amendment Acts declared as unconstitutional

Amendment Act	**Relevant ruling**
(1) 17th Amendment (in part)	*Golak Nath* v. *State of Punjab*, AIR 1967 SC 1643.
(2) 25th Amendment (article 31C)	*Keshavanand Bharati* v. *State of Kerala*, AIR 1973 SC 1461.
(3) 32nd Amendment	*Sambamurti* v. *Union of India*, AIR 1987 SC 66 (Rule of law)
(4) 36th Amendment (article 329)	*Indira Nehru Gandhi* v. *Raj Narain*, AIR 1975 SC 2299, para 251
[The relevant article 392A was repealed by the 44th Amendment]	
(5) Article 368 (Amendment power)	*Minerva Mills Ltd.* v. *Union of India*, AIR 1980 SC 1789.
(6) 52nd Amendment (10th Schedule, para 7)	*Kihota* v. *Zachilhu*, AIR 1993 SC 412.

Treaties on human rights

The most remarkable institutional development in human rights has been the evolution of an international multilateral treaty regime, with appropriate monitoring bodies. At the time of the only previous World Conference on Human Rights — that held in Teheran in 1968 — not a single human rights treaty body existed. By the time of the world conference in Vienna, several treaty bodies had come into existence under seven treaties namely the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Suppression and Punishment of the Crime of apartheid, the Convention on the Elimination of Discrimination against Torture, and the Convention on the Rights of the Child. At the time of the Vienna Conference 680 States were parties to these treaties, all plugged into their monitoring procedures.

These are Universal treaties, in the sense that they are open to all States. At the centre stands the International Convenant on Civil and Political Rights, with its detailed provisions and rather substantive monitoring procedures. The Covenant on Economic, Social and Cultural Rights has also developed monitoring procedures — in part modelled on the committee under the Civil and Political Covenant, and, in part fashioned for their own separate needs. The other treaties specify in further detail specific rights already contained in the International Covenant on Civil and Political Rights, and provide further monitoring mechanisms.

The most important of these monitoring mechanisms has been the examination, in their presence, of reports submitted by the States parties. The fact that all States are required to participate in this monitoring procedure and that the calling in, on States for examination does not, of itself, indicate an adverse finding rather it has encouraged even states with adverse human rights situations to participate. Some of these treaties provide for Optional Protocols, under which States can agree to individuals within their jurisdiction bringing legal claims of human rights violations. This procedure is particularly well developed under the International Covenant on Civil and Political Rights, where the Human Rights Committee has now established a very substantial jurisprudence. As of 15 May, 1994, there are 126 States parties to the covenant, and 74 of them accept the Optional Protocol. The number is growing rapidly.

Voidness

Article 13(1) provides that the existing laws which clash with the exercise of the fundamental rights conferred by Part III of the Constitution shall, to that extent, be void; *Keshavan* v. *State of Bombay*, (1951) SCR 228.

But they are not void *ab initio*. Existing laws which are inconsistent with any provision of Part III are rendered void only with effect from the commencement of the Constitution.

(i) *Nabhirajiah* v. *State of Mysore*, (1953) SCR 744.

(ii) *Pannalal* v. *Union of India*, AIR 1957 SC 397, 412.

(iii) *Rabindra* v. *Union of India*, AIR 1970 SC 470, 479.

Act of State

In *State of Haryana* v. *Amar Nath Bansal*, AIR 1997 SC 718 (paragraph 10) it has been held that as a result of the Convenant entered into by the Rulers of the States there was the establishment of a new sovereign over the territories comprising the States of the Rulers. The Covenant is, therefore an act of the State. With regard to the act of the State, the law is settled. The residents of the territories which are acquired do not carry with them the rights which they possessed as subjects of the ex-sovereign. As subjects of the new sovereign they possess only such rights as are granted or recognised by him.

Right of Equality

14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Notes on Article 14

Source

The source of article 14 lies in the American and the Irish Constitutions. It may be mentioned that the Preamble to the Indian Constitution speaks of equality of status and of opportunity and this article gives effect to that principle in the text of the Constitution. In a sense, the demand for equality is linked up with the history of the freedom movement in India. Indians wanted the same rights and privileges that their British masters enjoyed in India and the desire for civil rights was implicit in the formation of the Indian National Congress in 1885. The Commonwealth of India Bill, 1925, in clause 8 demanded, *inter alia* equality before the law and provided especially that there was to be "no disqualification or disability on the ground only of sex", along with the provision that all persons were to have equal right to the use of "roads, courts of justice and all other places of business or resort dedicated to the public". *See* Chakravarty and Bhattacharya, Congress in Evolution, (1940), page 27. The right to equality finds place in the report drawn up by Motilal Nehru as Chairman of the Committee appointed to determine principles of the Constitution for India (1928). The Karachi Resolution (March 1931) reiterated, *inter alia*, this right in the resolution on fundamental rights and economic and social change. Chakravarty and Bhattacharya, Congress in Evolution, (1940) page 28. The Sapru Report (1945) incorporating the proposals of the Sapru Committee, while laying emphasis on "minorities" did enunciate the fundamental rights and in page 260 of the report, described the fundamental rights of the proposed new Constitution as a standing warning to all—

> that what the Constitution demands and expects is perfect equality between one section of the community and another in the matter of political and civic rights, equality of liberty and security in the enjoyment of the freedom of religion, worship, and the pursuit of the ordinary applications of life.

Scope

Article 14 is to be understood in the light directive principles; *Indra Sawhney* v. *Union of India*, AIR 1993 SC 477, paragraph 4.

Limitations

Broadly speaking, judicial decisions interpreting article 14 while recognising the paramount nature of the fundamental rights, recognise the need on considerations of reality to have certain limitations. It is often stated that equality before the law guaranteed by the first part of article 14, is a negative concept while the second part is a more positive concept. Neither part of the article is above the recognition of exceptions and qualifications on special grounds. Thus, while the first part which is mentioned by Dicey (Dicey, Law of the Constitution, 9th Edition, page 202) as a second corollary of the rule of law would rule out any special 'privilege' for any authority or person. But Constitution does give certain privileges to the President and the Governors (and also to Members of Parliament and State Legislatures). Moreover some of its provisions, as interpreted, result in a certain element of discrimination. For example, the liability of the State in tort is even today in India not necessarily the same as the liability of any private employer. According to current theory, no suit lies against the Government for an injury in the course of exercise of the "sovereign' functions of the Government; *State of Rajasthan* v. *Vidyawati*, AIR 1962 SC 933, 935; *Kasturi Lal* v. *State of Uttar Pradesh*, AIR 1965 SC 1039; *Shyam Sundar* v. *State of Rajasthan*, AIR 1974 SC 890, paragraph 21.

Similarly, in the statutory framework of India, one does unfortunately come across provisions which introduce or maintain a certain amount of inequality between Government officers and ordinary citizens. For example, for a suit against the Government or against a Government officer for an act purporting to be done by the latter in his official capacity a two month notice is ordinarily required under section 80 of the Code of Civil Procedure, 1908. Similarly, where a public servant who is not removable from his office except by or with sanction of the Government, is accused of an offence committed by him while acting or purporting to act in the discharge of his official duties, criminal courts are barred from taking cognizance of such an offence without previous sanction of the Central Government or the State Government, (as the case may be) under section 197 of the Code of Criminal Procedure, 1973.

The Test

In determining the validity of such statutory provisions, courts in India have followed the general principle that equal protection of the laws means the right to equal treatment in *Similar Circumstances*, Courts have upheld legislation containing apparently discriminatory provisions where the discrimination is based on a reasonable basis. By 'reasonable', it is meant that the classification must not be arbitrary but must be rational. The classical test as judicially enunciated requires the fulfilment of two conditions, namely:—

(1) The classification must be founded on an intelligible differential which distinguishes those that are grouped together from others.

(2) The differential must have a rational relation to the object sought to be achieved by the law under challenge. Judicial decisions laying down the important propositions on the subject are the following:—

(i) *Chiranjit Lal* v. *Union of India*, (1950) SCR 869.

(ii) *State of West Bengal* v. *Anwar Ali*, (1952) SCR 284.

(iii) *Dhirendra Kumar Mandal* v. *Superintendent and Legal Remembrancer of Legal Affairs*, (1955) 1 SCR 244.

(iv) *Ameeroonissa* v. *Mehboob*, (1953) SCR 401, 414.

(v) *Yusuf* v. *State of Bombay*, AIR 1954 SC 321.

(vi) *Chitralekha* v. *State of Mysore*, AIR 1964 SC 1823, 1827.

(vii) *In re, Special Courts Bill*, 1978, AIR 1979 SC 478, paragraphs 74, 78, 80 to 89.

(viii) *General Manager* v. *Rangachari*, AIR 1962 SC 36.

(ix) *Balaji* v. *State of Mysore*, AIR 1963 SC 649, 664.

(x) *Nakara* v. *Union of India*, AIR 1983 SC 130, paragraph 14.

(xi) *Matajog* v. *Bhari*, AIR 1966 SC 44.

(xii) *Atam Prakash* v. *State of Haryana*, AIR 1986 SC 859.

(xiii) *Dr. Pradeep Jain* v. *Union of India*, AIR 1984 SC 1420.

(xiv) *Usamanbhai* v. *State of Gujarat*, AIR 1983 SC 1213.

Reasonableness

An important consequence of the rights to equality is the element of reasonableness. Classification which is unreasonable is open to challenge and to this extent the policy of legislation is open to judicial review. This aspect is illustrated *inter alia*, in the following decisions:—

(i) *Northern India Caterers* v. *State of Punjab*, AIR 1967 SC 1581.

(ii) *N.M.C.S. Mills* v. *Ahmedabad Municipality*, AIR 1967 SC 1801, 1810.

(iii) *Nagpur Improvement Trust* v. *Luther*, AIR 1973 SC 689, 694.

Equals and unequals

Unequals are not only permitted to be treated unequally but also they have to be so treated; *St. Stephen's College* v. *University of Delhi*, (1992) 1 SCC 558, paragraphs 97-100.

Flexibility

Article 14 has an in built flexibility to allow reasonable classification passed on an objective basis; *Granites* v. *State of Tamil Nadu*, JT (1994) 1 SC 374.

Arbitrary action and discretion

Legislation which give a wide power to the executive to select cases for special treatment, without indicating the policy, may be set aside as violative of equality. On the one hand, provisions which lay down policy are likely to be upheld. But, on the other hand, provisions which fail to give such guidance are likely to be invalidated. Important judicial decisions on this subject are:

(i) *State of West Bengal* v. *Anwar Ali*, (1952) SCR 284.

(ii) *Meenakshi Mills* v. *Vishwanath*, AIR 1955 SC 13.

(iii) *Avinder* v. *State of Punjab*, AIR 1979 SC 321, paragraph 9.

(iv) *Ajit Singh* v. *State of Punjab*, AIR 1967 SC 885, 886.

In *Shri Sita Ram Sugar Co. Ltd.* v. *Union of India*, AIR 1990 SC 1277, 1297, the Supreme Court (Mr. Justice Thommen) has laid down, that "any act of the repository of power, whether legislative or administrative or quasi judicial is open to challenge, if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land, or if it is so arbitrary or unreasonable that no fair minded authority could ever have made it".

These observations were made in the context of a challenge to an order for the price fixation of levy sugar under the Essential Commodities Act, 1955. In Footnote 8 to paragraph 52 of the judgment, the following English and American cases as well as Canadian and Australian cases, have been collected:—

(8) See the observations of Lord Russell in *Kruse* v. *Jhonson*, (1898) 2 QB 91, and that of Lord Greene. M.R. in *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation*, (1948) 1 KB 223. *See* also *Mixnam Properties Ltd.* v. *Chertsey U.D.C.*, (1965) AC 735; *Commissioner of Customs and Excise* v. *Cure and Dooley Ltd.*, (1962) 1 QB 340; *McEldowner* v. *Forde*, (1971) AC 632 (HL); *Carltona Ltd.* v. *Commissioners of Works*, (1943) 2 All ER 560, 564; *Point of Ayr. Collieries Ltd* v. *Lloyd George*, (1943) 2 All ER 546; *Scott* v. *Glasgow Corporation*, (1989) AC 470, 492; *Robert Baird. L.D. City of Glasgow*, (1936) AC 32, 42; *Manhattan General Equipment Co.* v. *Commissioner*, (1935) 297 US 129, 134; *Yates (Arthur) & Co. Ltd.* v. *Vegetable Seeds Committee*, (1945-46) 72 CIR 37; *Bailey* v. *Conole*, (1931) 34 WALR 18; *Body Builders Ltd.* v. *City of Ottawa*, (1964) 45 DIRC (2d) 211; *Re Burns and Township of Haldimand*, (1966) 52 DIRC 2d 1014 and *Lynch* v. *Tilden Produce Co.*, (1923) 265 US 315, 320-322.

Executive action

Occasionally, administrative action which violates equality comes up for scrutiny before the courts. Such action may be based on statute or may be purely executive action of an administrative nature, that is, of non-statutory character. In either case, a statutory or non-statutory order of the executive which is arbitrary may be set aside.

(i) *Gopi Chand* v. *Delhi Administration*, AIR 1959 SC 609.

(ii) *Iron & Metal Traders* v. *Jaskiel*, AIR 1984 SC 629.

(iii) *Vishnu Das* v. *State of Madhya Pradesh*, AIR 1981 SC 1636.

(iv) *Indian Express Newspapers* v. *Union of India*, AIR 1986 SC 515.

(v) *Suman* v. *State of Jammu & Kashmir*, AIR 1983 SC 1283, paragraph 6.

Here the courts are not concerned with the validity of the Parent Act, but with the mode of exercise of power thereunder.

Uncanalised discretion

Uncanalised discretion vested in an administrative authority is not permissible; *D.T.C.* v. *Mazdoor Union*, AIR 1991 SC 101, paragraphs 276, 279, 280.

Backward areas

Discrimination in favour of persons residing in backward areas is permissible *M.P. Oil Extraction* v. *State of Madhya Pradesh*, (1997) 7 SCC 592.

Industrial units were set up in backward areas at the instance of State Government. Special treatment was given to them assuring supply of Sal seeds at concessional rates for oil extraction. It was held that the distinction was reasonable; *M.P. Oil Extraction* v. *State of Madhya Pradesh*, AIR 1998 SC 145.

Cabel T.V. and Doordarshan

Legislation Levying tax on cabel television cannot be challenged merely on the ground that similar tax is not levied on Doordarshan. Doordarshan is not run for business purposes. Revenue collected from advertisement is intended to defray expenses; *A. Suresh* v. *State of Tamil Nadu*, AIR 1997 SC 1889.

Citizenship

Foreigners do not have a fundamental right to obtain Indian Citizenship; *David John Hopkrns* v. *Union of India*, AIR 1997 Mad 366.

Grant-in-aid

Non-extension of the grant-in-aid by the State to non-Government law colleges but the grant of such benefit to non-Government colleges with other faculties, is patently discriminatory; *State of Maharashtra* v. *Manubhai Pragji Vashi*, AIR 1996 SC 1, paragraphs 10, 12.

Procedural discrimination

Article 14 forbids discrimination in matters of procedure also.

(i) *State of West Bengal* v. *Anwar Ali*, (1952) SCR 284, 314, 328-357.

(ii) *State of Orissa* v. *Dhirendranath*, AIR 1961 SC 1715.

(iii) *Kathi Raning Rawat* v. *State of Saurashtra*, (1952) SCR 435: AIR 1952 SC 123.

(iv) *In re Special Courts Bill*, AIR 1979 SC 478.

(v) *Chopra* v. *Union of India*, AIR 1987 SC 357.

Panchayat: Removal of members

U.P. Panchayat Raj Act, 1947, section 14, is valid. It empowers members of the Gram Panchayat to remove the Pradhan of Gram Sabha by a motion of no confidence. It is not unconstitutional, as infringing (a) democracy or (b) article 14; *Ram Beli* v. *District Panchayat Rajadhukari*, AIR 1998 SC 1222.

Rent control legislation

Rent control legislation should strike a balance between private and public interest. Periodical revision is necessary to ensure that disproportionate benefit is not given to tenants. Social

legislation (like the Rent Control Act) should strike a balance. The law should not be unjust to one group; *Malpe Vishwanath Acharya* v. *State of Maharashtra*, AIR 1998 SC 602.

Royalties for industries

Government decisions in matters of policy, if *prima facie* based on a plausible rationable, are generally upheld by the courts. A certain element of discretion is thus allowed to be exercised by the executive. Thus, in one case decided by the Supreme Court the State Government of Madhya Pradesh in order to encourage the setting up of industries in certain areas had allowed fixed royalties at certain rates. Supply of raw material was allowed at concessional rates. Arbitration was held for determining the appropriate royalty and thereafter the royalty was re-fixed. It was held that such fixation of royalty was not arbitrary. Court would not interfere with Governmental decision in such matters; *M.P. Oil Extraction* v. *State of Madhya Pradesh*, AIR 1998 SC 145.

Change of name

In a Calcutta case, the Management of a School passed a resolution to change the name of the school after accepting a donation. Board accepted the resolution and the procedure adopted was in accordance with relevant statutory provisions. It was held that the action was taken for development of the institution and was valid; *Manoranjan Das* v. *State of West Bengal*, AIR 1998 Cal 22.

Armed Forces Act

It has been held that Armed Forces (Special Powers) Act, 1958 (28 of 1958), section 3, does not confer any arbitrary or misguided power. Section 3 of the Central Act does not confer an arbitrary or misguided power to declare an area as a "disturbed area". For declaring an area as a "disturbed area" under section 3 there must exist a grave situation of law and order on the basis of which the Governor/Administrator of the State/Union territory of the Central Government can form an opinion that the area is in such a disturbed or dangerous condition that the use of the Armed Forces in aid of the Civil power is necessary; *Naga People's Movements of Human Rights* v. *Union of India*, AIR 1998 SC 431.

Financial assistance

In a Delhi case, the petitioner, who had migrated from Punjab to Delhi in view of terrorist activities, was given meagre financial assistance by the Government. But the Government suddenly stopped even this, without assigning any reasons. The High Court held that such action of the Government of India was arbitrary and unconstitutional; *Darshan Lal* v. *Union of India*, AIR 1996 Del 52.

Reasonableness

Any act of the repository of power whether legislative or administrative or quasi judicial is open to challenge if it is in conflict with Constitution or the governing Act or the general principles of the law of the land or if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it; *Shri Sita Ram Sugar Co. Ltd.* v. *Union of India*, AIR 1990 SC 1277, 1297.

Government department

A public sector company even if it be a State within the meaning of article 12 is not a Government department.

(i) *Hindustan Steel Works Construction Ltd.* v. *State of Kerala*, AIR 1997 SC 2275.

(ii) *Steel Authority of India Ltd.* v. *Shri Ambica Mills*, AIR 1998 SC 418.

Tenders

Where a regulation made under the Housing Board Act provides for the allotment of property to eligible persons "by draw of lots" or in such other manner, it does not mean allotment in any arbitrary manner. It implies, that none is to be favoured or preferred by any means, logic or reason. In the matter of allotment of property, and, understandably, there should be no discrimination; *Daljit Singh* v. *Chandigarh Housing Board*, AIR 1990 P&H 144.

It is not an absolute rule that authority inviting tenders cannot relax the qualifications prescribed by the tender form. But the relaxation should not be arbitrary and should not prejudice other persons; *G.J. Fernandez* v. *State of Karnataka*, AIR 1990 SC 958, paragraph 16.

Contracts

Government cannot give a contact, or sell or lease out its property, for a consideration which is less than the highest that can be obtained for it, unless of course, there are other considerations which render it reasonable and in the public interest to do so; *Kashmiri Lal* v. *State of Jammu & Kashmir*, AIR 1980 SC 1992: (1980) 4 SCC 1. But the selection of a firm having a basis in a particular State, is justified; *Artee Minerals* v. *State of Uttar Pradesh*, AIR 1983 All 816. If a contract has to be awarded on a consideration of competing tenders, the State may extend the time initially prescribed or, where tenders are received but the tenderers have omitted to furnish any particulars the State may permit them to furnish those particulars; *Karnataka Mechanical, Civil Engineering Contractors* v. *State*, AIR 1990 Kant 206. Writ petition to quash impugned orders of the Delhi Development Authority cancelling the allotment of plots by auction is maintainable. The rules are framed under the Delhi Development Act, 1957 and the writ is not in the realm of contract, but is against the breach of a statutory obligation; *Phoenix Properties Pvt. Ltd.* v. *Union of India*, AIR 1990 NOC 104 (Delhi): (1989) 1 Delhi Lawyer 326.

In an agreement for the appointment of authorised dealers for the distribution and sale of foodgrains and sugar, a clause authorising termination without assigning reasons is not unconstitutional. These are essential commodities; *Jagat Bahadur* v. *District Supply Officer*, AIR 1990 All 113 (DB).

Admission in College

For admission to LL.B. course in the Department of Laws in the Punjab University, reservation of seats for employees of the University and their wards is unconditional. It has no reasonable nexus with the object of selection; *Parveen Hans* v. *Registrar*, AIR 1990 NOC 107 (P&H): (1990) 1 Serv LR 808. Such reservations cannot be made as a measure of welfare. Following decisions were referred:

(i) *Prasanna Dinkar Sohali* v. *Director-in-charge, Laxminarayan Institute of Technology, Nagpur*, AIR 1982 Bom 176.

(ii) *Ajay Kumar* v. *Chandigarh Administration*, AIR 1983 P&H 8.

(iii) *Ajay Kumar Mittal* v. *Haryana Agricultural University*, AIR 1984 P&H 278.

(iv) *Ashwinder Kaur* v. *Punjab University*, AIR 1989 P&H 190.

The High Court of Madhya Pradesh has held that the Madhya Pradesh Government Rules for selection for Post Graduate Medical Course 1984 Rule 8.5(b)(iii) which allots marks for participation in NCC (the National Cadet Corps) is arbitrary and void for the following reasons:

(i) It has no nexus with the object of selection,

(ii) All institutions do not have NCC facilities,

(iii) The rule does not provide for any (level of) achievement by the candidate. All certificates are given weightage.

In the same judgment, it has been held that a rule giving choice of discipline to only the children of Government servants, is void. Besides this, the judgment invalidates a rule which provides that 10 marks shall be added for securing distinction in each subject. Such a rule has no rational basis. A candidate securing distinction has already an edge. Giving further advantage amounts to double advantage for single performance; *P.S. Doshi* v. *State of Madhya Pradesh*, AIR 1990 MP 171, 185, 186 (DB) (V.D. Gyani & A.G. Qureshi, JJ.,) (June).

Similarly Rule 95(a) and (b) Madhya Pradesh Rules, which provides for the weightage of marks to Assistant Surgeons on the basis of their rural service, is arbitrary. It has no nexus with the object of selecting the best candidate for Post Graduate course; *P.S. Doshi* v. *State of Madhya Pradesh*, AIR 1990 Madhya Pradesh 171. (Rules for Post Graduate Medical courses).

On the question of reservation in educational institutions (particularly medical institutions) *see* further the following cases:—

(i) *State of Rajasthan* v. *Ashok Kumar Gupta*, AIR 1989 SC 177.

(ii) *Dr. Sanjay Mehrotra* v. *G.S.V.M. Medical College, Kanpur*, AIR 1989 SC 775.

(iii) *Greater Bombay Municipal Corp.* v. *Anjali Thukral*, AIR 1989 SC 1194.

(iv) *Dr. Dinesh Kumar* v. *M.L.N. College*, AIR 1986 SC 1877.

(v) *Suneel Jatley* v. *State of Haryana*, AIR 1984 SC 1534.

(vi) *Dr. Pradeep Jain* v. *Union of India*, AIR 1984 SC 1420.

(vii) *Madhuwanti* v. *State*, AIR 1983 Bom 443.

(viii) *Mini* v. *State of Kerala*, AIR 1980 SC 838.

(ix) *Dr. Jagdeesh Saran* v. *Union of India*, AIR 1980 SC 820.

(x) *D.N. Chanchala* v. *State of Mysore*, AIR 1971 SC 1762.

Education

Rules of admission (to medical courses) specifying length of service for purposes of claiming admission in the quota reserved for children of ex-servicemen, are valid; *G. Beena* v. *Andhra Pradesh University of Health Sciences*, AIR 1990 AP 247, paragraph 16 (Full Bench of 5 judges). "The reservation made in favour of the children of ex-servicemen is not one of the categories mentioned in article 15(4) of the Constitution. But such reservations have been upheld by the courts on the ground of reasonable classification."

Pension

The decision in *D.S. Nakara* v. *Union of India*, AIR 1983 SC 130 can be invoked so as to give liberalised pension to those who had already retired prior to liberalisation; *State of Rajasthan* v. *Prem Raj*, AIR 1997 SC 1087.

But it cannot be applied irrespective of the facts of the case; *K.L. Rathore* v. *Union of India*, AIR 1997 SC 2763.

Retrospective reduction of pension that had already become payable to employees is unreasonable and void; *Chairman Railway Board* v. *C.R. Raugadharniah*, (1994) 4 SLR 759.

Service

Rule for termination of service of permanent employee without reason is void; *DTC* v. *Mazdoor Congress*, AIR 1991 SC 101, paragraphs 199, 244, 257, 262-264, 267.

In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service, apart from being contrary to article 16(1) of the Constitution.

Where the High Court directed that an employee be confirmed with reference to a particular date and because of the faulty implementation of the High Court's order he was given promotions superseding many of his seniors even though they were eligible and suitable for promotion, the promotion given to him being totally unjustified and arbitrary, the Government could rectify the same, refix the seniority and consequently revert him; *Bal Kishan* v. *Delhi Administration*, AIR 1990 SC 100 (K. Jagannatha Shetty and A.M. Ahmadi, JJ.).

The doctrine of 'equal pay for equal work' does not come within article 14 as an abstract doctrine. But if any classification is made relating to pay scales and such classification is unreasonable and if unequal pay is based on no classification, then article 14 will at once be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work. *In other words, where unequal pay as brought about a discrimination within the meaning of article 14, it will be a case of 'equal pay for equal work'* as envisaged by article 14. If the classification is proper and reasonable and has a nexus to the object sought to be achieved, the doctrine of equal pay for equal work will not have any application. So long as it is not a case of discrimination under article 14, the abstract doctrine of equal pay for equal work as envisaged by article 39(d) has no manner of application nor is it enforceable in view of article 37; *Supreme Court Employees Welfare Association* v. *Union of India*, AIR 1990 SC 334 (Murari Mohan Dutta and T. Kochu Thommen, JJ.).

Classification in favour of skilled workers is permissible; *Paras Nath* v. *Union of India*, AIR 1990 SC 298, paragraph 5.

Service rules

On the question whether service rules would violate article 14, the undermentioned decisions may be seen:

(i) *Air India* v. *Nargis Mirza*, (1981) 4 SCC 335.

(ii) *Satish Chandra Sarkar* v. *Tata Iron and Steel Company*, (1983) 3 SCC 369.

(iii) *A.L. Tripathi* v. *Times of India*, (1984) 1 SCC 43.

(iv) *Union of India* v. *Tulsi Ram Batala*, (1985) 3 SCC 398, 453, paragraphs 72 and 95.

(v) *Workmen* v. *Hindustan Steel Ltd.*, (1984) Supp SCC 554.

(vi) *Central Inland Water Transport Corporation* v. *Brojonath Ganguli*, (1986) 3 SCC 156.

(vii) *O.P. Chandra* v. *I.T.D.C.*, (1986) 4 SCC 337.

(viii) *Lena Khan* v. *Union of India*, (1987) 2 SCC 402.

Air Hostesses and Deputy Chief Air Hostesses belong to the same class, in view of the duties performed by them. However, as the Air India Corporation had already adopted the policy of avoiding discrimination, the writ petition had become infructuous; *Lena Khan* v. *Union of India*, (1987) 2 SCC 402 [case subsequent to *Air India* v. *Nargis Mirza*, (1981) 4 SCC 335.

Services

A regulation of I.A.S. (Second Amendment) Regulation, 1989 which brings about classification of officers which is arbitrary and unreasonable is unconstitutional; *T. Sham Bhat* v. *Union of India*, JT (1994) 5 SC 165.

Rajasthani language

Non-inclusion of Rajasthani language in the Eighth Schedule to the Constitution does not violate article 14. Such policy matters have to be left to the State. Judicial interference is uncalled for in the absence of *mala fides; Kanhaiya Lal Sethia* v. *Union of India*, (1997) 6 SCC 573.

Tax

The Supreme Court has upheld the validity of section 10 (10C) of the Income Tax Act, 1961 which grants certain tax exemptions to employees in the Public Sector who retire voluntarily. An objection was raised against this provision in *Shashi Kant* v. *Union of India*, JT 1990 (3) SC 267 (Judgment dated 20 July, 1990), on the ground that article 14 had been violated. But it was held that there is a rational nexus between the legislation and its object. A number of Public Sector Undertakings who had formulated a scheme for Qualitative Requirements and Finance Act, 1981 had introduced this scheme to exempt payment received by them. In accordance with the approved scheme compensation package in public sector is much lower than that of private sector undertaking and for this reason discrimination was justified. moreover, one of the afflictions of the public sector were surplus staff which are to be streamlined. the scheme was ultimately beneficial to health, prosperity of the Public Sector.

Cases referred to:

(i) *Kerala Hotel and Restaurant Association* v. *State of Kerala*, (1990) (1) SC 324: AIR 1990 SC 913.

(ii) *M. Jahangir Bhatusha* v. *Union of India*, JT 1989 (2) SC 465.

(iii) *P.M. Aswathanarayana* v. *State of Karnataka*, (1989) Supp (1) SCC 696.

(iv) *Federation of Hotel and Restaurant Association of India* v. *Union of India*, JT 1989 (Supp) 168: (1989) 179 ITR 94.

(v) *Hindustan Paper Corporation Ltd.* v. *Government of Kerala*, (1986) 3 SCC 398.

(vi) *R.D. Shetty* v. *International Airport Authority of India*, (1979) 3 SCR 1014.

(vii) *I.T.O.* v. *N. Takin Roy Rymbai*, (1976) 103 ITR 82 SC Relied.

(viii) *S.K. Dutta, I.T.O.* v. *Lawrence Singh Ingty*, (1968) 68 ITR 272-Distinguished.

(ix) *Hindustan Antibiotics* v. *Workmen*, 1967 (1) SCR 652-Distinguished.

(x) *State of West Bengal* v. *Union of India*, (1964) 1 SCR 371.

(xi) *Pannalal Binjraj* v. *Union of India*, (1957) SCR 233.

(xii) *A. Thangal Kunju Musaliar* v. *M. Venkatachalam Potti*, (1955) 2 SCR 1196.

Legislature can choose a method of taxing if it is not arbitrary; *Kerala Hotel* v. *State*, (1990) 2 SCC 502.

Scheduled Castes

Denial of benefits to migrating members of Scheduled Castes and Scheduled Tribes does not violate article 14 or article 19; *State of Maharashtra* v. *Union of India*, JT (1994) 4 SC 423.

Stock Exchange

There are two categories of membership of the Delhi Stock Exchange—(i) those coming through public issue, and (ii) those coming through dilution of shareholding of existing members. Higher deposit demanded from the first category is constitutionally justifiable; *Om Prakash Poplai* v. *Delhi Stock Exchange Association*, JT (1994) 1 SC 114.

Interpretation

There is no discrimination where, owing to wrong interpretation some producers are exempted; *Eskay* v. *C.C.E.*, (1990) 4 SCC 680.

Taxation laws

In the matter of taxation, the court permits great latitude to the legislature. The legislature can make reasonable discrimination and make a choice in respect of districts, objects, persons, methods and even rates of taxation; *Mafatlal Industries* v. *Union of India*, (1997) 5 SCC 536.

Sales tax on restaurants

Imposition of sales tax on the sale of cooked food in the more costly eating places, while exempting cooked food sold in modest eating houses at lesser prices, is not unconstitutional. The classification is made to bring, within the tax net hotels or eating houses of the higher status. The object is to tax cooked food, only to the extent necessary, because food is a vital need for sustenance. A blinkered perception of stark reality alone can equate caviare served with champagne in a luxury hotel with the gruel and buttermilk in village hamlet, on the realistic abstract hypothesis that both the meals have the equal efficacy to appease the hunger and quench the thirst of the consumer. Validity of a classification under our Constitution does not require such a perception; *Kerala Hotel and Restaurant Association* v. *State of Kerala*, AIR 1990 SC 913, paragraphs 8-23, 24, 29, 31 and 32.

Telephones

When a partnership firm is in default in payment of telephone dues, the phone of an individual partner can also be disconnected under rule, 443, Telegraphs Rules, 1951. Such a consequence does not ensue as regards companies. But this discrimination between companies and firms is not unconstitutional. A company is distinct from its shareholders, and its shareholders have only a limited liability. A company and a firm cannot be compared; *Indravadan Pranlal Shah* v. *Ahmedabad Telephones*, AIR 1990 Guj 85 (DB).

Where a telephone subscriber files a complaint against excessive billing for phone calls (local and STD calls), the complaint cannot be rejected without considering the matter. Disconnecting the phone for non-payment is illegal. Besides this, rule 443. Telegraph Rules, does not vest the authorities with power to disconnect *any other telephone working* in the name of the same subscriber whether at same premises or elsewhere, on the ground of default in payments of bill of one of phones. Even for the defaulting phone, notice is required before disconnection; and "notice" means real and effective notice; *Santokh Singh* v. *Divisional Engineer*, AIR 1990 Gau 47.

Land ceiling

Section 4(7) of Urban Land (Ceiling and Regulation) Act, 1976, is not unconstitutional on the ground that it makes certain special provisions regarding Hindu individual families. Such a family is not a "person", and is not to be treated as a single unit for the purpose of ceiling limit. Under section 4(7) each individual member, major or minor, has a separate ceiling; *Pratima Paul* v. *Competent Authority*, AIR 1990 Cal 185 (DB) (A.M. Bhattacharjee, J.).

Exemption from tax

Grant of exemption from tax to public sector employees (in regard to retirement benefit) is valid; *Shashikant* v. *Union of India*, (1990) 4 SCC 360.

A taxing provision should not be struck down under article 14 unless it is palpably arbitrary. Classification (in sales tax law) made on the basis of turnover justifies the grant of exemption from sales tax; *Khadi & Village Soap Industries Association* v. *State of Haryana*, JT (1994) 5 SC 233.

Zone-wise merit list

Preparation of zone-wise merit list of candidates for recruitment to All India Service is unconstitutional (even if tests are held in different zones); *Radhey Shyam Singh* v. *Union of India*, AIR 1997 SC 1610.

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

[1][(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes].

Notes on Article 15

Relationship to article 14

In a sense, the general and abstract principle of equality laid down in article 14 is spelt out for certain situations in greater detail in article 15 and in some of the succeeding articles. But it should be noted that article 15 is limited to citizens, while article 14 extends to all persons. Secondly, article 15, clause (1) and article 15(2) are both limited to discrimination on the ground of religion, race, sex, place of birth or any of them. Thirdly, the article permits the State to make special provisions for women and children. Fourthly, the article also permits the State to make any special provision for the following:—

(a) Socially and educationally backward classes of citizens;

(b) Scheduled Castes; and

(c) Scheduled Tribes.

Article 14 prohibits the State from denying to any person equality before the law, *etc.* Articles 15(1) and 16(2) protect the citizen against discrimination; *State of Sikkim* v. *Surendra Prasad Sharma*, JT (1994) 3 SC 372.

Discrimination

The crucial word in this article is 'discrimination', which means 'making an adverse distinction with regard to' or 'distinguishing unfavourably from others'; *Kathi Raning Rawat* v. *State of Saurashtra*, (1952) SCR 435, 442. Another crucial word is 'only' so that if the discrimination is based on some ground not connected with religion, *etc.*, but with some other rational factor, the discrimination would be valid.

Women

Reservation of certain posts exclusively for women is valid under article 15(3), article 15 covers every sphere of State action; *Union of India* v. *V.P. Prabhakaran*, (1997)11 SCC 638.

Clause (3) of article 15, which permits special provision for women and children, has been widely resorted to and the courts have upheld the validity of special measures in legislation or executive orders favouring women. In particular, provisions in the criminal law, in favour of women, or in the procedural law discriminating in favour of women, have been upheld. The following decisions may be seen in this context:—

---

1. Added by the Constitution (First Amendment) Act, 1951, sec. 2.

(i) *Girdhar* v. *State*, AIR 1953 MB 147. (Section 354, Indian Penal Code).

(ii) *Yusuf* v. *State of Bombay*, AIR 1954 SC 321, 322. (Section 497, Indian Penal Code).

(iii) *Choki* v. *State*, AIR 1957 Raj 10 (Bail).

(iv) *Shahbad* v. *Abdulla*, AIR 1967 J & K 120, 127. (Service of summons on men only in civil cases).

Similarly, provisions providing for reservation of seats for women in local bodies or in educational institutions are valid. Undermentioned decisions may be seen:

(i) *Dattatraya* v. *State of Bombay*, AIR 1953 Bom 311.

(ii) *Sagar* v. *State*, AIR 1968 AP 165, 174.

Backward class

Clause (4) of article 15 may at the first sight appear to be a blanket provision, protecting any kind of beneficial discrimination in the nature of special provisions for the benefit of the classes mentioned therein. However, apart from questions as to when a particular class can be legitimately regarded as backward class, discriminatory provisions of such a nature may be struck down as unreasonable in the circumstances. This is on the basis that the general right of equality guaranteed by article 14, would override the special provision under article 15(4), in such circumstances. Hence, reservation of an excessively high percentage of seats in technical institutions for each classes would be void, In fact, ordinarily speaking, reservation in excess of 50 per cent of available seats may not be upheld. The undermentioned decisions may be seen on this point:

(i) *State of Uttar Pradesh* v. *Balram*, AIR 1972 SC 1375, 1395.

(ii) *Rajendran* v. *Union of India*, AIR 1968 SC 507.

(iii) *Balaji* v. *State of Mysore*, AIR 1963 SC 649, 662.

(iv) *Jayashree* v. *State of Kerala*, AIR 1976 SC 2381.

(v) *Periakaruppan* v. *State of Tamil Nadu*, AIR 1971 SC 2303.

(vi) *Abdul Latif* v. *State of Bihar*, AIR 1964 Pat 393, 395.

(vii) *Anil* v. *Dean, Govt. Medical College, Nagpur*, AIR 1985 Bom 153, paragraph 6.

In making reservation by executive order by virtue of article 15(4), the State has to take care that it is not unduly wide. Apart from Scheduled Castes and Scheduled Tribes, the other classes eligible or reservation, if made by the State, is the category of "socially and educationally backward classes of citizens". In article 46, (a directive principle of State policy) it is the obligation of the state to promote with special care the educational and economic interests of "the weaker sections of the people", and in particular, "of the Scheduled Castes and the Scheduled Tribes" which is provided for. By article 335, it is provided that the claim of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency in the administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. But this article does not mention backward classes. Virtually, the Supreme Court has held the element of efficiency of administration as a limitation on article 16(4). Incidentally, article 16(4) speaks of reservation of appointment of posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the service under the State. But this article has to be interpreted in the background of article 335 as mentioned above. Undermentioned decisions may be seen on the above aspect:

(i) *K.C. Vasanthkumar* v. *State of Karnataka*, AIR 1985 SC 1495, paragraphs 36, 57, 88 and 148 to 151.

(ii) *Comptroller and Auditor General* v. *Jagannathan*, AIR 1987 SC 537, paragraphs 21-22 and 30-31.

(iii) *Deepak* v. *State of Bihar*, AIR 1982 Pat 126, paragraph 12.

(iv) *Arti* v. *State of Jammu & Kashmir*, AIR 1981 SC 1009, paragraphs 7 and 9.

(v) *Nishi* v. *State of Jammu & Kashmir*, AIR 1980 SC 1975.

(vi) *State of Madhya Pradesh* v. *Nivedita*, AIR 1981 SC 2045, paragraph 25.

(vii) *State of Kerala* v. *Thomas*, AIR 1976 SC 490.

Medical colleges

Reservation in medical colleges is permitted; *Ajay Kumar* v. *State of Bihar*, JT (1994) 3 SC 662.

Reservation within reservation

Allotment of a quota of seats (in post graduate medical course) for candidates to be selected out of persons in Government service sponsored by the State Government is not a "reservation". It amounts to laying down a source for filling up the seats and is "classification" within article 15(1). Hence, reservation for SC/ST in the Government quota is not reservation within reservation. It is permissible; *Dr. Pranatosh Roy* v. *University of Calcutta*, AIR 1998 Cal 181.

University-wise reservation

(a) University-wise preference is valid if it is reasonable.

(b) Domicile-wise preference is valid if it does not exceed reasonable limits.

(c) College-wise preference is bad

Mohan Bir Singh Chawla v. *Punjab University*, AIR 1997 SC 788.

Area-wise reservation

Area-wise reservation (article 371D) prevails over reservation under article 15(4); *D. Rajesh Babu* v. *Nizam Institute of Medical Sciences*, AIR 1998 AP 162 (FB).

Women and sexual harassment

Sexual harassment of working women amounts to violation of the rights guaranteed by articles 14, 15 and 23 (equality and dignity), the court issued detailed directions on the subject; *Vishakha* v. *State of Rajasthan*, AIR 1997 SC 3011.

16. Equality of opportunity in matters of public employment.—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [1][under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

---

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for "under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State".

[1][(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion of any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which, in the opinion of State are not adequately represented in the srevices under the State.]

[2][(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Notes on Article 16

Object

The main object of article 16 is to create a constitutional right to equality of opportunity and employment in public offices. This article is confined to citizens as distinguished from other persons. Further, it is confined to employment or appointment to an office 'under the State'.

Certain exceptions to the right created by clause (1) and clause (2) of article 16 flow from clauses (3), (4) and (5) of the article. These relate, respectively, to a requirement of residence if sanctioned by Parliamentary legislation, reservation for backward class of citizens, if not adequately represented in the State services and prescription of profession a particular religion or belonging to a particular denomination, if the office is in connection with the affairs of any religious or denominational institution.

Discrimination

Besides the right to equality of opportunity in general terms, article 16(2) prohibits discrimination against a citizen on the ground of—

(a) religion,
(b) race,
(c) caste,
(d) sex,
(e) descent,
(f) place of birth, and
(g) residence, subject, of course to article 16(3).

In case of this particular article, the courts have held that the general right given by the first two clauses should be construed liberally and the exceptions may be construed strictly. Decisions on this point are;

(i) *General Manager* v. *Rangachari*, AIR 1962 SC 36, 41;
(ii) *Rajendran* v. *Union of India*, AIR 1968 SC 507.

However, the provision in clause (4) regarding backward class of citizens seems to possess a double character. As regards person not belonging to such class, the provision may appear to be a sanction for discrimination against them for special reasons. But as regards the backward classes themselves, they view it as a corrective to remedy the imbalance which has resulted from historical causes. As a result, considerable controversy and uncertainty exists as to the extent to which the

1. Ins. by the Constitution (Seventy-seventh Amendment) Act, 1995, sec. 2.
2. Ins. by the Constitution (Eighty-first Amendment) Act, 2000, sec. 2.

quantum of reservation may override the general right to equality. Broadly speaking, it may be stated that reservation in excess of 50% may be, *prima facie*, regarded as discriminatory. Decisions relevant to this particular point are:

(i) *General Manager* v. *Ranguchari*, AIR 1962 SC 36.
(ii) *Rajendran* v. *Union of India*, AIR 1968 SC 507.
(iii) *Triloki Nath* v. *State of Jammu & Kashmir*, AIR 1967 SC 1283.
(iv) *Periakaruppan* v. *State of Tamil Nadu*, (1971) SCR 430.

Scheme

Article 16(4) is not an exception to article 16 but gives a permissible basis; *Indra Sawhney* v. *Union of India*, AIR 1993 SC 477.

Other safeguards

On the question whether article 16(4) is subject to any safeguard, it is relevant to point out that courts has insisted that it must be read with article 335 which directs that in taking into consideration the claim of members of the Scheduled Castes and Scheduled Tribes, the State should bear in mind that the claim should be consistent with the maintenance of efficiency of administration. This incidentally calls upon the judiciary to read together articles 16, 46, 335. Decisions on this point are:

(i) *Devadasan* v. *Union of India*, AIR 1985 SC 983, paragraph 1.
(ii) *Balaji* v. *State of Mysore*, AIR 1963 SC 649, 664.
(iii) *A.B.K. Singh* v. *Union of India*, AIR 1981 SC 298.
(iv) *State of Kerala* v. *Thomas*, AIR 1976 SC 490, paragraphs 168 and 179.
(v) *K.C. Vasanthkumar* v. *State of Karnataka*, AIR 1985 SC 1495, paragraphs 36, 57, 88 and 148 to 151.
(vi) *Comptroller and Auditor General* v. *Jagannathan*, AIR 1987 SC 537.

Constitution (Seventy-seventh Amendment) Act, 1995

The Scheduled Castes and the Scheduled Tribes had been enjoying the facility of reservation in promotion since 1995. The Supreme Court, in its judgment dated 16th November, 1992, in the case of *Indra Sawhney* v. *Union of India*, however, observed that reservation of appointments or posts under article 16(4) of the Constitution is confined to the *initial appointment* and cannot extend to reservation in the matter of promotion. This ruling of the Supreme Court was considered to adversely affect the interests of the Scheduled Castes and the Scheduled Tribes. Since the representation of the Scheduled Castes and the Scheduled Tribes in services in the States had not reached the required level, it was thought necessary to continue the existing dispensation of providing reservation in promotion in the case of Scheduled Castes and Scheduled Tribes. In view of its commitment to protect the interests of the Scheduled Castes and the Scheduled Tribes, the Government decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled Tribes. To carry out this, it was necessary to amend article 16 of the Constitution by inserting a new clause (4A) to provide for reservation in promotion for the Scheduled Castes and Scheduled Tribes. The Constitution (Seventy-seventh Amendment) Act, 1995 seeks to achieve the aforesaid object.

Section 2 of this Act inserts a new clause (4 A) in article 16 of the Constitution, empowering the State to make a provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State, are not adequately represented in the services under the State, notwithstanding anything contrary contained in article 16.

Medical Colleges

Although the Indian Constitution permits reservation of seats (and other similar special

privileges) for persons belonging to Scheduled Castes and Tribes, it does not make it *obligatory* that such reservation should be made in every case for Government service or for admission to educational institutions. It is because of this position, that the Gujarat High Court held in *Sujal Atul Munshi* v. *State of Gujarat*, AIR 1996 Guj 170, that Government is not bound to reserve seats for such persons in payment seats for admission to medical educations. Mr. Justice S.M. Soni, held that, if reservation is to be made in payment seats, it would strike at the very purpose of reservation. If students of reserved category are not available, then less meritorious students may take advantage of payment seats.

Reservation to single post

Reservation to single post cadre (even through rotation or roaster) is void as it creates 100 per cent reservation; *P.G.I.M.R.* v. *K.L. Narasimhan*, (1997) 6 SCC 283.

Reservation and promotion

Article 16(4A) cannot be challenged as violating fundamental rights; *Ashok Kumar Gupta* v. *State of Uttar Pradesh*, (1997) 5 SCC 201.

Qualifying minimum marks

Government cannot totally dispense with minimum qualifying marks for Post-Graduate medical courses for Scheduled Castes *etc.* candidates; *Sadhana Devi* v. *State of Uttar Pradesh*, AIR 1997 SC 1120.

However reservation for the in Post-Graduate Courses is not itself inconsistent with efficiency; *P.G.I.M.R.* v. *K.L. Narasimha*, JT (1997) 5 SC 313.

Relaxation in standard of eligibility

Relaxation in shape of lower standards of eligibility is permissible for Scheduled Caste candidates *etc.* But relaxation should be consistent with eligibility; *Ram Bhagat Singh* v. *State of Haryana*, (1997) 2 SCC 417.

Employment

The words 'employment or appointment' are wide enough to include tenure, duration, emoluments and duties and obligations, whether the employment is temporary or permanent. They cover amongst themselves not merely the initial appointment, but also salary, increments, revision of pay, promotion, gratuity, leave, pension and age of superannuation. Decisions relevant to this point are:

(i) *Sukhnandan* v. *State of Bihar*, AIR 1967 Pat 617.

(ii) *Champaklal* v. *Union of India*, AIR 1964 SC 1854, 1860.

(iii) *Shiv Charan* v. *State of Mysore*, AIR 1965 SC 280, 282.

(iv) *Union of India* v. *Kashikar*, AIR 1986 SC 431, paragraph 8.

(v) *Prabhakar* v. *State of Andhra Pradesh*, AIR 1986 SC 210, paragraph 22.

A Naib Subedar in the Army had not, as laid down in the relevant criteria for promotion, obtained the grade of "High Average" for three years during the last five years immediately preceding. The screening Board considered his case and he was not found fit in the medical examination. It was held that, he could not make any grievance on the ground that pursuant to the selection by the Board, five officers who were junior to the *Naib Subedar* in question were promoted to the next higher grade. In this connection, he could not urge that grading 'B' given in the particular year in the Confidential Record should be treated as high average, when in the C.R. form for *Naib Subedar* for the year in question, grading 'B' was shown to be 'average'; *Ex Naib Subedar Katar Singh* v. *Union of India*, AIR 1990 SC 17.

Arbitrariness

Article 16 is a spread of article 14. Hence non-arbitrariness is a part of article 16; *DTC* v. *Mazdoor Congress*, AIR 1991 SC 101, paragraph 258-280.

M, was given promotion when he approached the High Court. He was an employee belonging to backward classes. Another employees who was similarly placed was denied promotion. It was held that the discrimination was illegal; *Vishwas Anna Sawant* v. *Municipal Corporation of Greater Bombay*, JT (1994) 3 SC 573.

Article 14 guarantees to all persons equality before the law. Articles 15(1) and 16(2) protect citizens against discrimination; *State of Sikkim* v. *Surendra Prasad Sharma*, JT (1994) 3 SC 372.

Scheduled Caste or Scheduled Tribe status is not carried by a member when he migrates to another State; JT (1994) 4 SC 423.

17. Abolition of untouchability.—"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

Notes on Article 17

Article 17 has been implemented by the Protection of Civil Rights Act, 1955 whose earlier title was "The Untouchability (Offences) Act, 1955'. The principal object of article 17 is to ban the practice of untouchability in any form. This expression refers to the social disabilities imposed on certain classes of persons by reason of their birth in certain castes and does not cover social boycott based on conduct; *Devarajiah* v. *Padmanna*, AIR 1961 Mad 35, 39. A curious question was raised in a Madras case. The State Legislature passed a law to improve the conditions of living of untouchables, by providing for the acquisition of land to construct a colony for them. The argument was advanced that such a construction would result in the segregation of those persons and would not be in conformity with article 17, but the argument was not accepted; *Pavadai* v. *State of Madras*, AIR 1973 Mad 458.

18. Abolition of titles.—(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

Notes on Article 18

National awards, not titles

It has been held that the Awards, Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri called as "The National Awards" would not amount to "title" within the meaning of article 18(1) and they should not be used as suffixes or prefixes. If this is done, the defaulter should forfeit the National Award conferred on him or her, by following the procedure laid down in Regulation 10 of each of the four notifications creating the National Awards; *Balaji Raghavan* v. *Union of India*, AIR 1996 SC 770 (paragraphs 32, 35).

Title

Where an award is not yet formally conferred and the Government communique relating thereto is cancelled on account of sentiments expressed by family members of the proposed deceased recipient, writ would not be issued for formal annulment of conferment of national award; *Union of India* v. *Bijan Ghosh*, AIR 1997 SC 3019.

Right to Freedom

19. Protection of certain rights regarding freedom of speech, *etc.*—(1) All citizens shall have the right.—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; [1][and]

[2][***]

(g) to practise any profession, or to carry on any occupation, trade or business.

[3][(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [4][the sovereignty and integrity of India,] the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.]

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [4][the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [4][the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in [5][sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

---

1. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 2 (w.e.f. 20-6-1979).
2. Sub-clause (f) omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 2, (w.e.f. 20-6-1979).
3. Subs. by the Constitution (First Amendment) Act, 1951, sec. 3, for clause (2) (with retrospective effect).
4. Ins. by the Constitution (Sixteenth Amendment) Act, 1963, sec. 2.
5. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 2, for "sub-clauses (d), (e) and (f)" (w.e.f. 20-6-1979).

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [1][nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

Notes on Article 19

Relationship

Article 19 is available against State action for the protection of freedoms enumerated in the article. Some controversy existed in the past as to whether the operation of this article is ruled out where articles 21 and 22 apply; but the current trend is not to regard these articles as mutually exclusive. Thus to take one example, a person whose freedom of movement has been taken away by imprisonment or detention does not thereby lose his freedom of expression, so long as it is exercised within the valid conditions relating to imprisonment or detention. Hence a detenue cannot be prevented from sending outside the jail for publication, matter which contains nothing prejudicial to the grounds for which he had been detained. The undermentioned decisions are relevant on the aspect mentioned in this paragraph:

(i) *State of Maharashtra* v. *Prabhakar*, AIR 1966 SC 424.
(ii) *Fernandez* v. *State of Maharashtra*, (1964) 66 Bom LR 185.
(iii) *Khan* v. *State*, AIR 1967 Bom 254.
(iv) *Narayanan* v. *State*, AIR 1973 Ker 97.
(v) *Haradhan Saha* v. *State of West Bengal*, AIR 1974 SC 2154, paragraphs 32 and 33.
(vi) *State of Maharashtra* v. *Basantibai*, AIR 1986 SC 1466.
(vii) *Minerva Mills Ltd.* v. *Union of India*, AIR 1980 SC 1789.
(viii) *Khudi Ram* v. *State of West Bengal*, AIR 1975 SC 550, paragraph 12.
(ix) *Vatheeswaran* v. *State of Tamil Nadu*, AIR 1983 SC 361.

Corporations as citizens

The freedoms under article 19 are limited to citizens and if literally construed these freedoms would not be available to corporations, because corporations cannot be talked of as having or possessing citizenship. But it has been held that shareholders can challenge the validity of a law on the ground of violation of their fundamental rights and the company may be joined in such proceeding with proper pleading. The decisions relevant to this point are the following:—

(i) *Amritsar Municipality* v. *State of Punjab*, AIR 1969 SC 1100, 1106.
(ii) *Barium Chemicals* v. *Company Law Board*, AIR 1967 SC 295, 305.
(iii) *Tata Engineering Co.* v. *State of Bihar*, AIR 1965 SC 40, 48.
(iv) *Bennett Coleman* v. *Union of India*, AIR 1973 SC 106.
(v) *D.F.O.* v. *Vishwanath Tea Co.*, AIR 1981 SC 1369, paragraph 7.

---

1. Subs. by the Constitution (First Amendment) Act, 1951, sec. 3, for certain words.

A company is not a "citizen" and cannot invoke article 19(1)(g). Dealing in intoxicants is not "trade" or business; *Khoday Brewing & Distilling Industries Ltd.* v. *State of Tamil Nadu*, AIR 1990 Mad 124.

Unincorporated associations

An unincorporated association cannot also be citizen and cannot claim these rights; *All India Bank Employees' Association* v. *National Industrial Tribunal*, AIR 1962 SC 171, 180.

Burden of proof

The scheme of article 19, broadly speaking, is that once a law *prima facie* violates a right guaranteed by any clause of the article, then the State must show how the legislation or other State action falls within the permissible limits allowed by clauses (2) to (6) of the article and to place proper material to support that argument. The decisions in support of this proposition are the following:—

(i) *Vrijlal* v. *State of Madhya Pradesh*, AIR 1970 SC 129, 135.

(ii) *Sagir Ahmed* v. *State of Uttar Pradesh*, AIR 1954 SC 728.

(iii) *Chinttaman Rao* v. *State of Madhya Pradesh*, (1950) SCR 759.

Criteria of validity of law

The considerations which generally prevail in judging the validity of a law in the context of this article are:

(a) whether the law imposes a restriction on the freedom in question;

(b) whether the restrictions have been imposed by law;

(c) whether the restrictions are reasonable; and

(d) whether the restriction besides being reasonable, is imposed for one of the specified purposes relevant to the freedom in question as enumerated in the applicable clause out of clauses (2) to (6) of the article.

Each of these conditions must be satisfied.

Test of reasonableness

In applying the test of reasonableness (which is the most crucial consideration), the broad criterion is whether the law strikes a proper balance between social control on the one hand and the rights of the individual on the other hand. The court must take into account the following aspects:—

(a) nature of the right infringed;

(b) underlying purpose of the restriction imposed;

(c) evils sought to be remedied by the law, its extent and urgency;

(d) how far the restriction is or is not proportionate to the evil; and

(e) prevailing conditions at the time.

Decisions relevant to these propositions are the following:—

(i) *Chintaman Rao* v. *State of Madhya Pradesh*, (1950) SCR 759.

(ii) *Khare* v. *State of Delhi*, (1950) SCR 519.

(iii) *Qaereshi* v. *State of Bihar*, (1959) SCR 629.

(iv) *Dwarka Prasad* v. *State of Uttar Pradesh*, (1954) SCR 803.

(v) *State of Maharashtra* v. *Himmatbhai*, AIR 1970 SC 1157.

(vi) *Laxmi* v. *State of Uttar Pradesh*, AIR 1981 SC 873.

The Supreme Court has considered the question of reasonableness on several occasions and has laid down several tests and guidelines, to indicate what, in particular circumstances, can be retarded as a reasonable restriction. One of the tests is to bear in mind the directive Principles of State Policy.

(i) *Kesavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461: (1973) Supp. SCR 1.

(ii) *State of Kerala* v. *N.M. Thomas*, AIR 1976 SC 490: (1976) 2 SCC 310.

(iii) *State of Bombay* v. *R.M.D. Chamarbaugwala*, AIR 1957 SC 699: (1957) SCR 874.

(iv) *Fatehchand Himatlal* v. *State of Maharashtra*, AIR 1977 SC 1825.

Arbitrariness

Where policy is laid down, discretion is not of reasonableness—arbitrary; *DTC* v. *Mazdoor Congress*, AIR 1991 SC 101.

Judicial officers

The right is conferred by article 19(1)(a) of the Constitution, on all citizens. Undoubtedly, the word "citizens" includes Government officers, including judicial officers. In one case, which went up to the Supreme Court, the question arose whether a judicial officer can be prohibited from writing or publishing legal works during the tenure of his office. Such a prohibition was laid down in rule 9 of the Karnataka Civil Services (Conduct) Rules. It was held that the refusal of the High Court of Karnataka to permit a judicial officer to publish a commentary on the Karnataka Rent Control Act was not illegal; *S.B. Narasimha Prakash* v. *State of Karnataka*, (1997) 2 SCC 425.

Trial by media

Questions are often raised as to "trial by media". When a sensational criminal case comes to be tried before the court, public curiosity experiences an upsurge. Newspapers — most of them — compete with each other, in publishing their own version of the facts. Some of them employ their own reporters, to unearth details not otherwise available. This enthusiasm is understandable. The thirst for sensational news is a natural human desire. However, investigatory journalism has its risks. The law does not prohibit it in the abstract. But the law does require the players in this activity to keep within certain limits. These limits primarily flow from:

(a) the right to reputation;

(b) the right to privacy; and

(c) the law of contempt of court.

Right to reputation requires that an allegation casting an adverse reflection on the character of an individual should not be published, unless the publication falls within one of the exceptional situations, recognised in this regard by the law. If the situation does not fall within this list of "privileged" or protected situations, then the publisher would be guilty of defamation.

The law of contempt of court operates on a slightly different plane. The paramount considerations hear are — dignity of the court and fairness of trial. Hence, it follows, that once a case has reached the court, no one is allowed to publish his own version of the facts. Violation of this rule amounts to contempt of court. This rule, evolved judicially, is supplemented by special statutory provisions, which prohibit the publication, even of certain matters actually taking place in the course of trial. For example, the name of a victim of rape cannot be published, without permission of the court.

Now, the question may arise whether this negative approach of the law is, in any respect, inconsistent with the constitutionally guaranteed right of freedom of speech and expression. In this connection, it may be pointed out that the Constitution, in article 19(2), expressly saves the

operation of the law of contempt of court (apart from recognising other permissible heads of restriction on the freedom of speech and expression). The matter came up before the Supreme Court in *State of Maharashtra* v. *Rajendra J. Gandhi*, (1997) 8 SCC 386.

In this case, which related to the rape of a girl, unnecessary publicity and the taking out of processions by the public caused great harm to the girl. The Supreme Court had to order transfer of the case from Kohlapur to Satara. As regards freedoms guaranteed by the Constitution, the Supreme Court cautioned that there is a procedure established by the law governing criminal trials. A trial by media or by public agitation is the very antithesis of the rule of law. It can well lead to miscarriage of justice. A judge has to guard himself agaihst any such pressures.

Government advertisements

It is not, that the courts have not recognised the role of the press as serving the public interest. This is illustrated by a Guwahati High Court decision, relating to Government advertisements. The State Government of Tripura, departing from its established policy, started allowing 24 per cent of its advertisements to only one newspaper and allowing only 6 per cent for another newspaper. This action was challenged before the Guwahati High Court, which held that the policy violated at least two articles of the Constitution, namely:—

(i) article 14 (equality); and

(ii) article 19(1)(a) (freedom of speech).

The High Court pointed out that freedom of speech and press, are not so much for the benefit of the press, as for the benefit of the general community. Government's duty to ensure circulation of newspapers arises, because the community has a right to be supplied with information, and Government owes a duty to educate the people within the limits of its resources; *Sushil Chowdhary* v. *State of Tripura*, AIR 1998 Gau 28.

Government advertisements should be given to newspapers under a definite policy or uniform guidelines (Guidelines set out in the judgment); *Ghulam Nabi* v. *State*, AIR 1990 J&K 20, 21, for Rights of reply see *L.I.C.* v. *Manubhai Shah*, AIR 1993 SC 171.

Business aspects of the media

Where an activity involves questions of freedom of speech as well as questions of freedom to carry on a business, profession or vocation, then it is legitimate for the State to regulate the business aspect in terms of article 19(1)(g); *A. Suresh* v. *State of Tamil Nadu*, AIR 1997 SC 1889.

Right to Know

A citizen has a right to know about the activities of the State, the instrumentalities, the departments and the agencies of the State. The privilege of secrecy which existed in old times, (namely) that the State is not bound to disclose the facts to the citizens or the State cannot be compelled by the citizens to disclose the facts, does not survive now to a great extent. Under article 19 there exists the right of freedom of speech. Freedom of speech is based on the foundation of freedom of right to know. The State can impose and should impose reasonable restrictions in the rights where it affects the national security or any other matter affecting the nation's integrity. But the right is limited and particularly in the matter of sanitation and other allied matters, every citizen has a right to know how the State is functioning and why the State is withholding such information in such matters; *L.K. Koolwal* v. *State of Rajasthan*, AIR 1988 Raj 2.

Citizens have a right to know about affairs of Government. But the right is not absolute, *Secrecy* can be *legitimately* claimed in respect of transactions with repercussions on public security; *Dinesh Trivedi* v. *Union of India*, (1997) 4 SCC 306 (case relating to Vohra Committee Report).

Convicts

If a convict is prepared to give an interview to journalists and videographers, the facility should be allowed to the latter. Position of a person sentenced to death is in this respect not inferior to that of a citizen; *M. Hasan* v. *Government of Andhra Pradesh*, AIR 1998 AP 35.

Substantive and procedural aspects

Reasonableness in this context covers substantive reasonableness, as well as procedural reasonableness. Thus, in ordinary circumstances, it will be unreasonable to make the exercise of a fundamental right depend on the subjective satisfaction of the executive. Decisions on this point are:

(a) *Khare* v. *State of Delhi*, (1950) SCR 519;

(b) *Gurbachan* v. *State of Bombay*, (1952) SCR 737, 742;

(c) *Virendra* v. *State of Punjab*, AIR 1958 SC 986.

The press

Freedom of the press is not expressly mentioned in article 19 but has been held to flow from the general freedom of speech and expression guaranteed to all citizens. As judicially construed, this freedom now includes not merely the freedom to write and publish what the writer considers proper (subject to reasonable restrictions imposed by law for specific purpose), but also the freedom to carry on the business so that information may be disseminated and excessive and prohibitive burden restricting circulation may be avoided. Decisions relevant to these aspects of freedom of press are the following:—

(i) *Virendra* v. *State of Punjab*, AIR 1958 SC 986.

(ii) *Express Newspapers* v. *Union of India*, AIR 1958 SC 578.

(iii) *Bennett Coleman* v. *Union of India*, AIR 1973 SC 106.

(iv) *Prabha* v. *Union of India*, AIR 1982 SC 6.

(v) *Indian Express Newspapers* v. *Union of India*, AIR 1986 SC 515.

(vi) *Sakal Papers* v. *Union of India*, AIR 1962 SC 305.

(vii) *Express Newspapers* v. *Union of India*, AIR 1986 SC 872.

(viii) *Sharma* v. *Sri Krishna*, AIR 1959 SC 395, 402.

Contempt of court

Guidelines for the use of contempt of court law have been suggested in the case of *Re Mulgaonkar*, AIR 1978 SC 72. They are as under:

(1) Economic use of this jurisdiction is desirable.

(2) Harmonisation between free criticism and the judiciary should be the goal.

(3) Confusion between personal protection of a libelled judge and prevention of obstruction of public justice should be avoided.

(4) Press should be given free play within reasonable limits, even when the focus of its critical attention is the court.

(5) Judges should not be hypersensitive, even where distortions and criticism overstep the limits.

(6) If after taking into account all these considerations, the court finds contempt of court beyond condonable limits, then the strong arm of the law must be used in the name of public interest and public justice.

Lastly, Mr. Justice K. Iyer stated "Justice" and not judge should be the keynote and creative legal journalism and activist statesmanship for judicial reform cannot be jeopardized by an undefined apprehension of contempt action.

The Supreme Court did try to restrain the use of the Contempt of Courts Act, 1971 when it stated in *Rama Dayal Markarha* v. *State of Madhya Pradesh*, AIR 1978 SC 922, that the path of justice is not strewn with roses and justice being not a cloistered virtue, it must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary man. The Supreme Court in *Conscientious Group* v. *Mohammad Yunus*, AIR 1987 SC 145 and in *P.N. Duda* v. *P. Shiv Shankar*, AIR 1988 SC 1208 adopted a liberal attitude towards contempt of court by dismissing the petition as it realised that there was no imminent danger of interference with the administration or justice or of bringing it into disrepute.

False news item about Judges

A newspaper published a news item, stating that two sons of a senior Judge of the Supreme Court and two sons of the Chief Justice of India had been favoured by allotment of petrol outlets from the discretionary quota of the Petroleum Minister. Falsity of the news item was later admitted by the concerned editor, publisher and newspaper. They said that it had been published inadvertently. It was held that they could not escape responsibility for careless publication. However, as they had tendered unqualified apology, the apology was accepted with a warning to be careful in future; *In re Hari Jai Singh*, AIR 1997 SC 73.

Letter by employee against the organisation

An employee of a public sector organisation wrote to the Governor a letter, making against the head of the Corporation certain allegations of mismanagement. It was held that such an employee can be dismissed and he cannot claim the protection of any fundamental right, to justify such conduct; *M.H. Devendrappa* v. *Karnataka State Small Industries Development Corporation*, AIR 1998 SC 1064.

Freedom of expression

State cannot prohibit criticism of executive action; *L.I.C.* v. *Manubhai Shah*, AIR 1993 SC 171, paragraph 23.

Freedom of assembly

The freedom of assembly can be restricted for the purpose mentioned in article 19(3) by a reasonable law, moreover, the freedom can be exercised only on public land. Restrictions imposed under Article 19(3) would cover restrictions to maintain the sovereignty and integrity of India and public order, including the maintenance of traffic in the area concerned. But the restrictions cannot attain the status of absolute prohibition at least in normal times.

Freedom of association

The right to freedom of association covers a variety of right, so long as the association is for a lawful purpose. The right includes the right to start or continue an association subject to reasonable restrictions in the interest of sovereignty or integrity of India, public order and morality. Decisions relevant to this right are the following:—

(i) *Kulkarni* v. *State of Bombay*, AIR 1954 SC 73.

(ii) *O.K. Ghosh* v. *Joseph*, AIR 1963 SC 812, 815.

(iii) *D.A.V. College* v. *State of Punjab*, (1971) 2 SCC 269, 281.

(iv) *Delhi Police Sangh* v. *Union of India*, AIR 1987 SC 379.

(v) *All India Bank Employees' Association* v. *National Industrial Tribunal*, AIR 1962 SC 171, 179.

(vi) *Sitharmachary* v. *Senior Deputy Inspector*, AIR 1958 AP 78 (right of an individual to refuse to be member of an association Upheld).

(vii) *State of Bihar* v. *Misra*, AIR 1971 SC 1667 (procedural aspect).

(viii) *Madhu Limaye* v. *S.D.M.*, AIR 1971 SC 2486.

(ix) *R.R.W. Union* v. *Registrar*, AIR 1967 Cal 507, 508.

Freedom of movement

The freedom of movement guaranteed by clause (d) of article 19(1) is in addition to the right to personal liberty guaranteed under article 21. Orders of externment and internment violate this right unless they fall within the permissible restrictions. While judicial decisions confine this article to physical movement, the intangible aspect of freedom may receive protection under article 21. For example, domiciliary visits by the police at night disturbing a person's sleep infringe personal liberty under article 21 and may not be constitutionally valid, except in the case of surveillance needed for the legitimate purpose of prevention of crime. In particular, entries in the 'Bad Character Register' at a police station, if *mala fide*, are subject to judicial scrutiny. A combined reading of article 19(1)(d) and article 21 has led to the proposition that residents of hilly areas have a right to be provided access to the roads, which access is necessary for the proper exercise of the right of life. Generally, a person proposed to be extreme must be given a hearing. A permanent restriction on the freedom of movement is *prima facie* suspect. Decisions ringing out these propositions are the following:—

(i) *Khare* v. *State of Delhi*, (1950) SCR 519.

(ii) *Kharak Singh* v. *State of Uttar Pradesh*, AIR 1953 SC 1295, 1303.

(iii) *Govind* v. *State of Madhya Pradesh*, AIR 1975 SC 1378.

(iv) *State of Madhya Pradesh* v. *Bharat*, AIR 1967 SC 110.

(v) *Malak* v. *State of Punjab*, AIR 1981 SC 760, paragraphs 7, 9 and 10.

(vi) *Maneka Gandhi* v. *Union of India*, AIR 1978 SC 597, paragraph 54.

(vii) *State of Himachal Pradesh* v. *Umed*, (1986) 2 SCC 68 (cases relating to hilly areas).

(viii) *Gurbachan* v. *State of Bombay*, (1952) SCR 737.

Freedom of residence

Denial of benefits to migrating members of Scheduled Castes and Scheduled Tribes does not violate article 19; *See* JT (1994) 4 SC 423.

Freedom to reside and settle in any part of India guaranteed by clause (e) of article 19(1) is subject to reasonable restrictions in the interest of the general public or for the protection of interest of Scheduled Tribes. In general, substantive as well as procedural reasonableness would be required. This freedom is said to be intended to remove internal barriers in India or between any of its parts, but is limited to citizens. Moreover, even citizens can be subjected to reasonable restrictions such as passport regulations. Besides this, certain areas may be banned for certain kinds of persons, such as prostitutes. These propositions bear support from the following decisions:—

(i) *State of Madhya Pradesh* v. *Bharat*, AIR 1967 SC 1170, 1172.

(ii) *Kharak Singh* v. *State of Uttar Pradesh*, AIR 1953 SC 1295, 1303.

(iii) *Ebrahim* v. *State of Bombay*, (1954) SCR 923, 950 (Passport).

(iv) *State of Uttar Pradesh* v. *Kaushaliya*, AIR 1964 SC 416, 423 (Prostitutes).

Freedom of profession, etc.

The right guaranteed by clause (g) of article 19(1), namely, freedom of profession, trade or business, is intended to ensure that citizens' right to business does not depend on grant by the State and that the State cannot prevent a citizen from carrying on a business, except by a law imposing a reasonable restriction in the interest of the general public. Of course, there is no right where the business is dangerous or immoral; such a business may be absolutely prohibited or may be required to be licensed. Moreover, there is no right to carry on a business at any place or at any time restrictions may be imposed in that regard. A citizen cannot be compelled to do a certain business. Relevant cases are:

(i) *Pyare Lal* v. *Delhi Municipality*, AIR 1968 SC 133, 138. (Business on the streets).
(ii) *Ebrahim* v. *Regional Transport Authority*, (1953) SCR 290, 299. (Reasonable restrictions for public convenience).
(iii) *Hathising Manufacturing Co.* v. *Union of India*, AIR 1960 SC 924, 928. (Right not to carry on a business).
(iv) *Hari Shankar* v. *Deputy Commissioner*, AIR 1975 SC 1121. (Absolute prohibition for harmful trades).
(v) *Lakhan Lal* v. *State of Orissa*, AIR 1977 SC 722. (Dangerous trade).
(vi) *State of Rajasthan* v. *Byas*, (1971) (unreported judgments of the Supreme Court 222, 223) (Right cannot be surrendered).

Aids

A person suffering from AIDS can be restricted in his movements by law; *Lucy* v. *State of Goa*, AIR 1990 Bom 355, paragraphs 7-8 (law made by State Legislature).

Bandhs

The distinction drawn between "Bandh" and a call to general strike or "Hartal" is well made out with reference to the effect of a "Bandh" on the fundamental rights of citizens. There cannot be any doubt that the fundamental rights of people as a whole cannot be sub-servant to the claim of fundamental right of an individual or only a section of the people. There cannot be any right to call or enforce a "Bandh" which conflicts, with the exercise of the fundamental rights of other citizens, in addition to causing national loss in many ways.

"Bandhs" do not fall with in the fundamental right of speech. A Bandh is a warning to a citizen that he goes for work or opens his shop he would be prevented. Even if legislature does not prohibit them courts should intervene to protect the right to work or right to study;*Communist Party of India (M)* v. *Bharat Kumar*, AIR 1998 SC 184.

Co-operative Societies Act

Though article 19(1)(c) guaranteed,freedom to form an association the freedom is subject to certain permissible restrictions imposed by law. Provisions of the U.P. Co-operative Society Act, 1965 do not infringe this freedom. Court cannot interfere with policy of the Government; *State of Uttar Pradesh* v. *C.O.D. Chheoke Employees Co-operative Society Ltd.*, AIR 1997 SC 1413 paragraph 16.

Position of the press

The press is not immune from the general law of liability for defamation (civil and criminal); *Printers Mysore* v. *Assistant Commercial Law Officer*, JT (1994) 1 SC 692.

Price

For commodity not vital for consumer greater consideration can be given to profit; *ONGC* v. *Association*, (1990) Supp SCC 397, paragraphs 28, 30, 31, 36.

Business with Government

There is no right to carry on business with the Government as such; nor is there a right that one's product (*e.g.* text books) must be recognised by the Government. Nor there is any right that at a public auction or in tenders invited by the Government, the highest bid or the lowest tender must be accepted. But by virtue of article 14, it is now established that rejection of the highest bid or the lowest tender by Government must not be arbitrary. Decisions in support of these propositions are the following:—

(i) *Ram Jawaya* v. *State of Punjab*, (1955) 2 SCR 225, 240 (Text books).

(ii) *State of Orissa* v. *Hàri Narayan*, AIR 1972 SC 1816. (Auctions).

(iii) *State of Uttar Pradesh* v. *Bijoy*, AIR 1982 SC 1234.

(iv) *Ram and Shyam Company* v. *State of Haryana*, AIR 1985 SC 1147, paragraphs 13 and 14. (Rejection of highest bid).

Dealings with supplier

Railways cannot ban all dealings with a particular supplier for a specified period, without assigning any reasons; *Vijay Singh Nahata* v. *Union of India*, AIR 1998 Cal 153 (Shyamal Kumar Sen, J.) (Suspension of business, founding C.B.I. enquiry).

Fireworks

It has been held that there is no inherent right in a citizen to manufacture fireworks which create noise beyond the permissible limits. Restrictions on manufacture of such fireworks were imposed by authorities in pursuance of order of High Court (but without taking formal decision regarding sound level of fireworks to be used in State). Pollution Control Board was directed to take such decision after considering all aspects of the matter; *Burrabazar Fire Works Dealers Association* v. *The Commissioner of Police, Calcutta*, AIR 1998 Cal 121 (DB).

Ministers

A Minister may be restrained from contracting (because of his position); *Vidadala Harinadhababu* v. *N.T. Ramarao*, AIR 1990 AP 20, paragraph 24 (FB).

Licences and permits

In the context of licences and permits required for carrying on a business or trade, the grant of such licence cannot depend upon the absolute discretion of an administrative authority. The policy must be laid down on which the discretion is to be exercised. Further, in general, the discretion must be exercised on relevant consideration. In short, if the law imposing licensing does not set out the consideration, the law would be void, if the consideration are set out in the law, but are departed from by the competent authority while administering the law then the order of the competent authority would be void, even though the law itself may be valid. Generally, an existing licence cannot be revoked without giving the licensee an opportunity of hearing. The undermentioned decisions bear out these propositions:

(i) *Dwarka Prasad* v. *State of Uttar Pradesh*, (1954) SCR 803.

(ii) *Faruk* v. *State of Madhya Pradesh*, AIR 1970 SC 93, 96.

(iii) *Fedco* v. *Bilgrami*, (1960) SCJ 235, 249 (Hearing before cancellation of licence).

(iv) *Sukhnandan* v. *Union of India*, AIR 1982 SC 902, paragraph 23 (Hearing before cancellation of licence).

(v) *Banthia* v. *Union of India*, AIR 1970 SC 1453.

(vi) *Khatki* v. *Limdi Municipality*, AIR 1979 SC 418.

(vii) *All Delhi Rickshaw Union* v. *Municipal Corporation*, AIR 1987 SC 648 (Reasonable restrictions are permissible).

(viii) *State of Madhya Pradesh* v. *Nand Lal*, AIR 1987 SC 251, paragraphs 4, 32 and 33 (Requirements of State policy).

Price fixation

Price fixation being a legislative act, prior consultation is not required; *H.S.K.V.* v. *Union of India*, (1990) 4 SCC 516, paragraph 12.

Shareholder

A shareholder was held to have standing to challenge the wage fixation order passed by a wage board, on the reasoning that an improper fixation would cast a heavy financial burden on the company; *P.T.I.* v. *Union of India*, AIR 1974 SC 1044. The Supreme Court has described the law relating to right of a company to challenge violation of article 19 as in a 'nebulous state' and added, the trend is in the direction of holding that in the matter of fundamental freedoms guaranteed by article 19, the rights of a shareholder and the company which the shareholders have formed are rather co-extensive and the denial to one of the fundamental freedoms would be denied to the other. It is time to put an end to this controversy; *Delhi Cloth & General Mills* v. *Union of India*, AIR 1974 SC 937, 943.

Ban on slaughter

Ban on slaughter of bulls below 16 years of age would be a reasonable restriction. But total ban on slaughter of bulls would be unreasonable; *Hasmattulah* v. *State of Madhya Pradesh*, AIR 1996 SC 2076.

Total prohibition

Total prohibition can be imposed against manufacture of drugs or preparations which are injurious to health. Decisions on this subject are:

(i) *Pradeep Sharma (P) Ltd.* v. *Union of India*, AIR 1997 SC 2648.

(ii) *Lakshmikant* v. *Union of India*, (1997) 4 SCC 739.

20. Protection in respect of conviction for offences.—(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Notes on Article 20

Scope

The prohibitions imposed by article 20 are directly relevant to the criminal process. While clause (1) is concerned with the substantive law of criminal liability and penalty, clauses (2) and (3) are concerned mainly with the stage of procedure. In the jurisprudence of constitutional law, article 20(1) incorporates a prohibition against '*ex post facto penal law*', Article 20(2) incorporates a

prohibition against 'double jeopardy' article 20(3) gives protection against 'testimonial compulsion'. Because of the word 'person' used in each clause, the article must be regarded as applicable to a corporation which is accused, prosecuted, convicted or punished for an offence; *Sharma* v. *Satish*, (1954) SCR 1077. Thus, article 20 is not confined to individuals.

Violation of law and common law offences

Although clause (1) is mainly concerned with retroactive penal legislation, it also seems to give constitutional recognition to the principle that there cannot be a conviction except for violation of a 'law in force'. It would seem, therefore, that in India, there can be no 'common law' offences; and the judiciary cannot, in India, create an offence not created by statute. How for the word 'violation' would require that the violation should be personal, is a matter not specifically provided for in the article. The question must await judicial decisions at a later stage and article 21 may also be relevant to this aspect.

No right in procedure

It should be noted that while substantive law imposing liability or penalty cannot be altered to the prejudice of the person supposed to be guilty with retrospective effect, there is no vested right in procedure. Besides this, the thrust of article 20(1) is in the field of criminal law only, since the word 'offence' as defined in article 367 read with the General Clauses Act, 1897 can only denote an act or omission punishable by law. Important decisions on the above aspect are the following:—

(i) *Shiv Bahadur* v. *State of Uttar Pradesh*, (1953) SCR 188.
(ii) *Kedar Nath* v. *State of West Bengal*, AIR 1953 SC 404.
(iii) *Jawala Ram* v. *State of Pepsu*, AIR 1962 SC 1246.
(iv) *State of West Bengal* v. *S.K. Ghose*, AIR 1963 SC 255.
(v) *Satwant* v. *State of Punjab*, AIR 1960 SC 266.
(vi) *Union of India* v. *Sukumar*, AIR 1966 SC 1206.
(vii) *Nayyar* v. *State*, AIR 1979 SC 603.
(viii) *Kanyaiya Lal* v. *Income Tax Commissioner*, AIR 1975 SC 255.
(ix) *Maya* v. *C.I.T.*, (1986) 1 SCC 445, paragraphs 11 and 12.

Double jeopardy

As regards article 20(2) dealing with double jeopardy what it bars is prosecution and punishment after an earlier punishment for the same offence. 'Offence' here means an offence as defined in section 3(38) of the General Clause Act, 1897 applied to the Constitution by article 367. The offence must be the same, that is to say, involving the same ingredients in all respects and a trial for a separate and distinct offence is not barred under article 20(2). However, this article must be taken as supplemented by section 26 of the General Clauses Act, 1897 and the provisions of the Code of Criminal Procedure, 1973 as to second prosecution after conviction or acquittal for an offence where the second prosecution is excluded by the doctrine of *autrefois convict* or *autrefoic acquit*. The word 'prosecution' would not normally cover departmental proceedings not held before a criminal court. The object of this provision is to avoid the harassment which must be caused to a person for successive criminal proceedings where only one crime has been committed. Important decisions interpreting this clause of article 20 are the following:—

(i) *Makbool* v. *State of Bombay*, (1953) SCR 730.
(ii) *Kalawati* v. *State of Himachal Pradesh*, (1953) SCR 546.
(iii) *State of Bombay* v. *Apte*, AIR 1961 SC 548.
(iv) *Narayan Lal* v. *Mistry*, AIR 1961 SC 29.

(v) *Leo Roy* v. *Superintendent, District Jail*, AIR 1958 SC 118, 121.

(vi) *Assistant Customs Collector* v. *Melwani*, AIR 1970 SC 962.

Testimonial compulsion for the accused

The protection against compulsion 'to be a witness' is confined to persons 'accused of an offence'. There is no *constitutional* protection for witnesses (*i.e.* persons other than the accused). However, the Indian Evidence Act, 1872, in sections 132 and 148, confers a limited protection against self-incrimination to witness in civil and criminal courts. Important cases on the above limitation of article 20(3) are the following:—

(i) *Narayanlal* v. *Maneck*, AIR 1961 SC 29, 38-39.

(ii) *Charoria* v. *State of Maharashtra*, AIR 1988 SC 938, 947.

Commencement of protection

The protection given to the accused commences as soon as a formal accusation is made, whether before or during prosecution. It follows that the lodging of a First Information Report, the filing of a complaint in court or the issue of a show-cause notice under a special criminal statute brings article 20(3) into play. But there must be a proceeding contemplating action against a particular person. Important cases on this point are the following:—

(i) *Dastagir* v. *State of Madras*, AIR 1960 SC 756, 761.

(ii) *State of Bombay* v. *Kathi Kalu*, AIR 1961 SC 1808, 1816.

(iii) *R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1870.

(iv) *Joseph* v. *Narayana*, AIR 1964 SC 1552, 1556.

(v) *Veera Ibrahim* v. *State of Maharashtra*, AIR 1976 SC 1167.

(vi) *Nandini* v. *Dani*, AIR 1978 SC 1025, paragraph 30.

(vii) *Balkishan* v. *State of Maharashtra*, AIR 1981 SC 379, paragraph 70.

Compulsion to be a witness

(a) The immunity under article 20(3) does not extend to compulsory production of material objects or compulsion to give specimen writing, specimen signature, finger impression or compulsory exhibition of the body or giving of blood specimens. Following cases may be seen on this point:—

(i) *Dastagir* v. *State of Madras*, AIR 1960 SC 756.

(ii) *Ram Swarup* v. *State*, AIR 1958 All 119, 126.

(iii) *Palani, In re*, AIR 1955 Mad 495.

(iv) *Subbiah* v. *Ramaswami*, AIR 1970 Mad 85.

(v) *Pokhar Singh* v. *State*, AIR 1958 Pun 294.

(b) Compulsion regarding documents is prohibited only if the documents convey the personal knowledge of the accused relating to the charge; *State of Bombay* v. *Kathi Kalu*, AIR 1961 SC 1808, 1816.

Foreign Exchange Regulation Act

Where a person is summoned and examined under section 40 of the Foreign Exchange Regulation Act, 1973, it cannot be presumed that the statement was obtained under pressure or duress. The statement cannot be attacked on the ground of infringement of the constitutional guarantee of protection against self incrimination under article 20(3) of the Constitution; *C. Sampath Kumar* v. *The Enforcement Officer*, AIR 1998 SC 16.

Penalty not prescribed

Article 20(3) does not apply where there is no penalty prescribed for the contravention in question; *A.A. Mulla* v. *State of Maharashtra*, AIR 1997 SC 1441 paragraphs 21, 22.

Caution

It is not unconstitutional to give a caution to speak the truth; *Sampath Kumar* v. *E.D. Enforcement Directorate Madras*, AIR 1998 SC 16.

21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

Notes on Article 21

Scope

Article 21, if read literally, is a colourless article and would be satisfied, the moment it is established by the State that there is a law which provides a procedure which has been followed by the impugned action. But the expression 'procedure established by law' in article 21 has been judicially construed as meaning a procedure which is reasonable, fair and just. Read with article 39A, it would further imply legal aid being made available to the indigent accused and a prisoner. The concept of 'fairness', so evolved, has been imported into article 22(3) also, so that a prison regulation which arbitrarily deprives a detenu of opportunity to interview his relatives or friends or a lawyer is invalid. *See* the undermentioned cases as to the scope of article 21 on above points:

(i) *Maneka Gandhi* v. *Union of India*, AIR 1978 SC 597, paragraph 56. (The basic case).

(ii) *Gopalanachari* v. *Administrator, State of Kerala*, AIR 1981 SC 674, paragraph 6.

(iii) *Francis Coralie Mullion* v. *Union Territory of Delhi*, (1981) Cri LJ 306 (SC), paragraphs 6-8.

(iv) *Olga Tellis* v. *Bombay Municipal Corporation*, AIR 1986 SC 108.

The right to life and the right to personal liberty in India have been guaranteed by a constitutional provision, which has received the widest possible interpretation. Under the canopy of article 21 of the Constitution, so many rights have found shelter, growth and nourishment. An intelligent citizen would like to be aware of the developments in this regard, as they have evolved from judicial decisions.

Article 21 lays down that no person shall be deprived of life or personal liberty, except according to procedure established by law.

Though the article appears to be negative in its grammatical form, it has, in reality, been given a positive effect by judicial interpretation. The right is a fundamental right, enforceable against the State; and judicial decisions have imposed, on the State, several positive obligations. For example a person who cannot pay for medical expenses must be given free medical treatment and that too, without delay. A person should not be hand-cuffed (after arrest on a criminal charge) save in certain exceptional situations.

A lay man may perhaps ask a simple but basic question, as to why a constitutional provision is needed on the subject. Is the ordinary law not sufficient? Now, it is true that the Indian Penal Code (45 of 1860) (like the Penal Codes in all countries) contains adequate provisions to punish a person who takes away or attempts to take away the life of another human being. But the impact of a constitutional provision lies in the fact, that by being elevated to the pedestal of a fundamental right, the right is placed beyond the reach of ordinary legislation inspired by political motives.

"Life", in article, 21 is not merely the physical act of breathing. This has been recognised by the courts. In fact, as philosophers tell us, life is lived at many levels. The Rig Veda [10.177.2], gives a subtle description of the mundane activity of speech. The soul (which, in the Rig Veda, is compared to a bird soaring high in the heavens), inspires or fills up the mind with speech. The "Gandharva" (the mind) carries it to the heart; and then, the luminous inspired speech takes shape, in words that can be heard. One can pursue this imagery further. While the external mundane activities of life have their own place, they are the manifestations of an inner, unseen, unperceived activity—which , indeed is the real "life" that a human being lives. It is true that judicial decisions on article 21 do not embark upon such an analysis in *depth*.[1] But they do take note of the *width* of the right to life. What follows, is a brief narration of this wide approach. It has been recognised that the mere right to life (article 21) means more than the right to service; *Samatha* v. *State of Uttar Pradesh*, AIR 1997 SC 3297 (Empowerment of tribals).

Threat to life

Where threat to life is immediate, the court can interfere; (1990) 1 SCC 282.

AIDS and employment

It has been held that a person cannot be regarded as medically unfit and denied employment, merely on the ground that he is found to be HIV positive; *MX of Bombay Inhabitant* v. *M/s. ZY*, AIR 1997 Bom 406.

Beauty contests

It has been held that beauty contests, in their true form, are not objectionable. But, if there is indecent representation of the figure of a woman or if there is any matter derogatory of women, then it would offend the Indecent Representation of Women Act, 1986, and also article 21; *Chandra Rajkumari* v. *Police Commissioner, Hyderabad*, AIR 1998 A.P. 309.

Custodial death

For custodial death, the writ court can award compensation. Custodial death has been described as "one of the worst crimes in a civilised society, governed by the rule of law"; *D.K. Basu* v. *State of West Bengal*, AIR 1997 SC 610 paragraph 36; (1997) 1 SCC 416.

The right against custodial violence arises from article 21; *Sheela Barse* v. *State of Maharashtra*, AIR 1983 SC 378: (1983) Cri LJ 642.

Health

The right to life includes the right to health; *State of Punjab* v. *Mahinder Singh Chawla*, AIR 1997 SC 1225.

Housing

Dicta in *Shantistar* v. *Narayanan*, (1990) 2 SCJ 10, paragraphs 8 and 13, speak of a right to housing. Later it was been held that shelter is not a fundamental right; *Shankar Gauri* v. *Union of India*, JT (1994) 5 SC 634.

However, the following propositions emerge from a Supreme Court judgment relating to encroachments:—

(a) There is no right to encroach on public paths, *etc.*

(b) But the State and Municipal Corporations have constitutional as well as statutory duty to provide to poor and indigent weaker sections, residential accommodation by utilising urban vacant land available under the Urban Land Ceiling Act.

(c) But is not obligatory for the State or the Municipal Corporation to provide alternative accommodation in *every case*.

(d) In view of the consistent influx of rural population into urban areas and consequent growth of encroachments, local bodies should also prepare plans in accordance with articles 243 G and 243 W of the Constitution.

Ahmedabad Municipal Corporation v. *Nawab Khan Gulab Khan*, AIR 1997 SC 152.

It has been held that the right to shelter is a fundamental right. It springs from:—

(a) right to residence [article 19(1)a] and

(b) right to life [article 21]

U.P. Avas Evam Vikas Parishad v. *Friends Co-operative Housing Society Ltd.*, AIR 1996 SC 114, paragraph 7.

Privacy

Right to privacy is a part of article 21; *Govind* v. *State of Madhya Pradesh*, AIR 1975 SC 1378.

Telephone tapping

Telephone tapping would infringe article 21 of the Constitution, unless it is permitted "under procedure established by law". The court issued guidelines for the exercise of power of interception of telegrams under section 5(2) of the Indian Telegraphs Act, 1885; *People's Union for Civil Liberties* v. *Union of India*, AIR 1997 SC 568.

Sexual harassment

Sexual harassment in the workplace is a violation of articles 15 and 21 of the Constitution. (The court gave detailed directions on the subject, which guidelines are to be strictly observed by all employers, public or private, until suitable legislation is enacted on the subject; *Vishakha* v. *State of Rajasthan*, AIR 1997 SC 3011.

Right to work

Right to work is not a fundamental right. But it can be claimed after employment; *Air India Statutory Corporation* v. *United Labour Union*, AIR 1997 SC 645.

Right to life: Various rights included

Declaring that the right to life included the "finer graces of human civilisation", the Supreme Court in *P. Nalla Thampi* v. *Union of India*, AIR 1985 SC 1133, virtually rendered this fundamental right a repository of various human rights.

Thus, it includes:

(a) the right to live with human dignity; *Francis Coralie Mullin* v. *Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

(b) right to healthy environment; *M.C. Mehta* v. *Union of India*, AIR 1987 SC 1086, 1090; *Bandhua Mukti Morcha* v. *Union of India*, AIR 1984 SC 802;

This right [healthy environment], itself includes the following:—

(i) Pollution free water and air; *B.L. Wadhera* v. *Union of India*, AIR 1996 SC 2969; *Indian Council for Enviro-legal Action* v. *Union of India*, AIR 1996 SC 1446 paragraphs 55, 65.

(ii) Protection against hazardous industries; *Vellore Citizens Welfare Forum* v. *Union of India*, AIR 1996 SC 2715.

(c) Free education upto 14 years of age; *J.P. Unnikrishnan* v. *State of Andhra Pradesh*, AIR 1993 SC 2178.

(d) Emergency medical aid; *Parmanand Katara* v. *Union of India*, AIR 1989 SC 2039.

(e) Right to health; *State of Punjab* v. *Mahinder Singh Chawla*, AIR 1997 SC 1225.

(f) Privacy; *Peoples Union of Civil Liberties* v. *Union of India*, AIR 1997 SC 568.

(g) Right to shelter; *U.P. Avas Avam Vikas Parishad* v. *Friends Co-operative Housing Society Ltd.*, AIR 1996 SC 114, paragraph 7.

(h) Right to livelihood, which includes right of succession; *Madhu Kishwar* v. *State of Bihar*, (1996) 5 SCC 125.

(i) Timely medical treatment in Government Hospital; *Paschim Bangal Khet Mazdoor Society* v. *State of West Bengal*, AIR 1996 SC 2426, paragraphs 9, 15, 16;

(j) Right, not to be driven out of a State; *National Human Rights Commission* v. *State of Arunachal Pradesh*, AIR 1996 SC 1234, paragraphs 16, 20, 21.

(k) Right to fair trial; *Police Commissioner, Delhi* v. *Registrar, Delhi High Court*, AIR 1997 SC 95, paragraphs 15, 23.

(l) Right to speedy trail; *Common Cause Laws* v. *Unions of India*, AIR 1996 SC 1619 and AIR 1957 SC 1539, paragraph 1.

(m) Right to free legal aid, where conviction for an offence may involve loss of life or personal liberty.

(i) *Suk Das* v. *Union Territory of Arunachal Pradesh*, AIR 1986 SC 991.

(ii) *M.H. Hoskot* v. *State of Maharashtra*, AIR 1978 SC 1548.

(iii) *State of Maharashtra* v. *M.P. Washi*, AIR 1996 SC 1 paragraph 16.

Fair procedure

Subsequent to *Maneka Gandhi's* case, AIR 1978 SC 597, so many aspects of fair procedure or reasonable and just procedure in the context of article 21 have come up before the court. The stream is endless and the case law can be surveyed only in a full fledged commentary. Some important points laid down in the case law are mentioned in the succeeding paragraphs, by way of illustrations. For convenience of reference, the topics to which the cases relate have been arranged alphabetically as far as possible, in the following paragraphs.

Atomic energy

Under articles 21 and 32, the court has directed that the Gamma Chambers housed in Jawaharlal Nehru University, Delhi, be sent to Bhabha Atomic Research Centre. Bombay for recharging; *M.C. Mehta* v. *Union of India*, AIR 1987 SC 1086.

Bail

Pre-trial release on personal bond (*i.e.* without surety) should be allowed where the person to be released on bail is indigent and there is no substantial risk of his absconding; *Hussainara* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1360.

Child offenders

Child offenders are entitled to speedy trial; *Sheela Barse* v. *Union of India*, AIR 1986 SC 1773, paragraph 12.

Compensation

Rudul Shah v. *State of Bihar*, AIR 1983 SC 1086 was the first case in which compensation was awarded by the writ court. *Sebastian Hongray* v. *Union of India*, AIR 1984 SC 571 and *Bhim Singh* v. *State of Jammu & Kashmir*, AIR 1986 SC 494 were later cases, in the same directions.

Alongwith this, another step was taken by the judiciary. In *Nilabati Behras'* case, the court made it clear that the liability of the State was direct and was not vicarious liability as an employer. This approach was actually anticipated by the Andhra Pradesh High Court in *Ramakonda Reddy* v. *State of Andhra Pradesh*, AIR 1989 AIR 235.

India is not alone in awarding compensation for "constitutional torts". Such compensation has been awarded in the United States, for a long time. *See* J.C. Love, "Damage": A Remedy for violation of constitutional rights "(1979) 67 California Law Rev 1242.

Such compensation has been awarded in Canada also. *See* Lorne Sossiu, "Crown Proceedings and Constitutional Torts" referred to by Vikram Raghan, article in AIR 1998 Journal 102 (June). It is also being awarded in Ireland, *see* Andrew S. Butter, "Constitutional Rights in private Litigation", (1993) 6 Anglo American L. Rev. 1.

Illegal detention

In a Madras Case, the State of Tamil Nadu was ordered to pay compensation (Rs. 50,000) to a lady who was illegally detained; *Meera* v. *State of Tamil Nadu*, (1991) Cri LJ 2395 (Mad).

Inhuman treatment

In a Delhi case, the High Court came to the conclusion that, having regard to the inhuman manner in which the deceased had been treated by the police compensation should be awarded. The High Court further held that the fact that the matter was under investigation on an FIR Registered with the police, could not come in the way of compensation being awarded in writ jurisdiction; *P.V. Kapoor* v. *Union of India*, (1992) Cri LJ 140 (Del).

Oppression of peasants

In *P.U.D.R.* v. *State of Bihar*, AIR 1987 SC 355: (1987) Cri LJ 528 the People's Union filed a writ petition complaining that about 600 peasants who had assembled peacefully were harassed by the police. The Supreme Court awarded compensation of Rs. 20,000 in case of death and Rs. 5,000 in case of injury.

Assault on child

In *Saheli* v. *Commissioner of Police*, AIR 1990 SC 513, police officers had, at the behest of the landlord, beaten up lady tenant "K" and her minor son "N". The son succumbed to the injuries. The mother was held entitled to compensation against the Delhi Administration. The compensation so awarded included:

(a) solatium for mental pain;

(b) solatium for distress and indignity;

(c) damages for loss of liberty;

(d) damages for death.

It was further directed that the Delhi Administration may recover the amount from the officers responsible for the beating.

Police atrocities

In *People's Union for Democratic Rights* v. *Police Commissioner*, (1989) 4 SCC 730, under article 32, compensation was awarded to victims of police atrocities.

When the constitutional and legal rights of a person are invaded with a mischievous or malicious intent, the court has jurisdiction to compensate the victim, by awarding suitable monetary compensation; *Bhim Singh* v. *State of Jammu & Kashmir*, 1986 Cri LJ 192 (SC) (paragraphs 2, 3).

Nilabati v. *State of Orissa*, (1993) 2 SCC 746; *D.K. Basu* v. *State of West Bengal*, 1996 (9) SCALE 298. *People's Union of Civil Liberties* v. *Union of India*, AIR 1997 SC 568.

Compensation in Canada

In Canada, literature on the subject suggests that the ground is now set for the Canadian Charter of Rights and Freedoms, to become a source for the Canadian Courts to grant compensation for the infringement and denial of constitutional guarantees.

Cooper, Stevenson, Charter Damages Claims, (1990) 1 Lorne Sossion, "Crown Prosecutors and Constitutional Torts. The Promise and Politics of Charter Damages," (1993) Queens LJ 372.

Position in US

In the United States of America, a constitutional tort is redressed in two ways. There is available a statutory cause of action under the Civil Rights Act of 1871, for a violation of the constitutional rights and other rights based on common law principles. American courts have made some important progress in this regard. T. Eisenberg & S. Schwab, "The Reality of Constitutional tort Litigation, (1987) 67 IOWA L. Rev. 641; J. C. Love, "damages: A Remedy for violation of Constitutional Rights, (1979) 67 CAL IF L. REV 1242.

Irish Constitution

Under the Constitution of Ireland, (1937), article 4.3.1, the Judges are invested with the obligation of protecting and enforcing the rights of individuals and provisions of the Bunchreacht in proceedings before them.

[*See*, Andrew S. Butler, "Constitutional Rights in Private Litigation: A Critique and Comparative Analysis" (1993) 16 Anglo American Law L. REV. 1 (1993)]. A person can directly invoke, the Bunchreacht, so as to sue for the violation of constitutionally guaranteed rights.

[*Meskill* v. *CIE*, 1973 IR 121, *Kennedy & Arnold* v. *Ireland*, 1987 IR 587, here an unjustified phone tap was redressed with damages)] These developments have given rise to the evolution of a theory of constitutional torts that have been enabling the judiciary to vindicate and protect the rights of an Irish Citizen, by ordering the payment of compensation for the infringement of rights.

See also, W. Binchy, "Constitutional Remedies and the Law of Torts" in J.O. Reilly (ed.) Constitutional Remedies and the Law of Torts: Essays in Honour of Brian Walsh (1992), 201.

Compensation was awarded to the dependents of persons killed in firing on persons of backward classes and also to persons injured in the firing; *People's Union for Democratic Rights* v. *State of Bihar*, AIR 1987 SC 355: (1987) Cri LJ 528: (1987) 1 SCC 265.

Cruel punishment

A punishment which is too cruel or torturesome is unconstitutional; *Inderjeet* v. *State of Uttar Pradesh*, AIR 1979 SC 1867.

Death sentence: Mandatory

Compulsory death sentence for murder committed by a life convict undergoing the sentence of imprisonment for life (section 303, I.P.C.) is unconstitutional; *Mithu* v. *State of Punjab*, AIR 1983 SC 473, paragraphs 23-25.

Debtor

A debtor can be put in civil prison for non-payment of decretal debt, only if there is—

(i) wilful default by him, notwithstanding his having sufficient means to pay, or

(ii) some other element of bad faith, going beyond mere indifference; *Jolly Verghese* v. *Bank of Cochin*, AIR 1980 SC 470, paragraph 10.

Delay in bringing to trial

Inordinate delay by the State in bringing an accused to trial or in preferring an appeal against his acquittal, violates article 21, if there is no fault by the accused. *See* the under-mentioned decisions:

(i) *State of Maharashtra* v. *Champalal*, AIR 1981 SC 1675, paragraph 2.

(ii) *State of Rajasthan* v. *Sukhpal*, AIR 1984 SC 207.

(iii) *Rudul Shah* v. *State of Bihar*, AIR 1983 SC 1096.

Delay in execution

Unjustifiable delay in execution of death sentence violates article 21; *Sher Singh* v. *State of Punjab*, AIR 1983 SC 465, paragraphs 13, 16 and 19.

Drugs

Where a ban imposed on the import and manufacture of certain drugs under sections 10A and 26A of the Drugs and Cosmetics Act, 1940 is not implemented (according to complaint made in public interest litigation), the court may call for explanation from the Government of India; *Vincent Parikulangara* v. *Union of India*, (1987) Supp SCC 90.

Right to die (Provision in I.P.C.)

Punishing attempt to commit suicide does not violate article 21; *Gian Kaur* v. *State of Punjab*, AIR 1996 SC 1257, paragraphs 19, 21, 22, 27, 31, 41, 42.

See also

(i) *Lokendra Singh* v. *State of Madhya Pradesh*, (1996) 2 SCC 648.

(ii) *State of Maharashtra* v. *Maruti Sharipati Dubeel*, AIR 1997 SC 411.

Environment : Precautionary principle

The "precautionary principle" requires the State to anticipate, prevent and attack the causes of environmental degradation; *M.C. Mehta* v. *Union of India*, (1997) 3 SCC 715.

Ecology : Ecological balance

Every attempt should be made to preserve the fragile ecology of the forest area and to protect the Tiger Reserve and the right of tribals in the State of Madhya Pradesh; *Animal and Environment Legal Defence Fund* v. *Union of India*, (1997) 3 SCC 549, paragraph 11.

Ecology and "Public Trust" Doctrine

The Supreme Court has enunciated the doctrine of "Public Interest", based on the legal theory of the ancient Roman Empire. The idea of this theory was that certain common properties such as rivers, seashores, forests and the air, were held by the Government in trusteeship for the free and unimpeded use of the general public. The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The concept "environment" bears a very close relationship to this doctrine. The doctrine enjoins upon the resources for the enjoyment of the general public, rather to permit their use for private ownership or commercial purposes. It was thus held that the State Government committed breach of public trust, by leasing the ecologically fragile land to the Motel management; *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388.

Environment

Chemical or other hazardous industries which are essential for economic development may have to be set up. But measures should be taken to reduce the risk of hazard or risk to the community by taking all necessary steps for locating such industries in a manner that would pose the least risk or danger to the community and for maximizing safety requirements in such industries. The Supreme Court directed the High Court to set up a Green Bench; *Vellore Citizens Welfare Forum* v. *Union of India*, AIR 1996 SC 2715.

Environment: Hazardous chemicals

Certain directions regarding hazardous chemicals were given by the Supreme Court in *M.C. Mehta* v. *Union of India*, (1987) Supp SCC 131: AIR 1987 SC 1086, relying partly on article 21. In the above judgment, there are dicta that life, public health and ecology have priority over unemployment and loss of revenue.

Right to pollution free air falls within article 21; *Subhash* v. *State of Bihar*, AIR 1991 SC 420, paragraph 7.

Forests

In one case the court gave directions regarding declaring disputed areas as reserved forests; *Banwasi Sewa Ashram* v. *State of Uttar Pradesh*, (1986) 4 SCC 753. And Later AIR 1987 SC 374: (1987) 3 SCC 304.

Water

Right to life under article 21 includes the right to enjoyment of pollution-free water; *B.L. Wadhera* v. *Union of India*, AIR 1996 SC 2969.

Fair trial

Assurance of a fair trial is the first imperative of the dispensation of justice; *Police Commr., Delhi* v. *Registrar Delhi High Court*, AIR 1997 SC 95 paragraphs (15, 23)

Foreign travel

Right to go abroad forms part of article 21; *Satwant Singh Sawhney* v. *Ramare Union*, AIR 1961 SC 1836.

Handcuffing

The Supreme Court has given directions to the Union of India to frame rules or guidelines as regards the circumstances in which handcuffing of the accused should be resorted to. *See* the following cases:—

(i) *Prem Shanker Shukla* v. *Delhi Administration*, AIR 1980 SC 535.

(ii) *Altemesh Rein* v. *Union of India*, AIR 1998 SC 1768.

(iii) *Citizens for Democracy* v. *State of Assam*, AIR 1996 SC 2193.

(iv) *Shobray* v. *Superintendent Central Jail*, AIR 1987 SC 1514: (1978) Cri LJ 1534.

(v) *T. Vatheeswaran* v. *State of Tamil Nadu*, AIR 1983 SC 367(2): (1983) Cri LJ 482.

Insane person

Imprisonment of a person is unconstitutional after that person in declared insane; *Veena* v. *State of Bihar*, AIR 1983 SC 339.

Legal aid

An accused person at least where the charge is of an offence punishable with imprisonment—is entitled to be offered legal aid, if he is too poor to afford counsel. Further, counsel for the accused must be given sufficient time and facility for preparing the defence. Breach of these safeguards of fair trial would invalidate the trial and conviction, even if the accused did not ask for legal aid. *See* the undermentioned cases:

(i) *Hussainara* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1377.
(ii) *Hussainara* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1369.
(iii) *Khatri* v. *State of Bihar*, AIR 1981 SC 928.
(iv) *Suk Das* v. *Arunachal Pradesh*, AIR 1986 SC 991.
(v) *Ranchod* v. *State of Gujarat*, AIR 1974 SC 1143.
(vi) *M.H. Hoaskol* v. *State of Maharashtra*, AIR 1978 SC 154: (1978) Cri LJ 1678.

Livelihood

Right to livelihood is an integral facet of the right to life; *Narendra Kumar* v. *State of Haryana*, JT (1994) 2 SC 94.

Medical aid in Government hospitals

Failure on the part of a government hospital to provide timely medical treatment to a patient in need of such treatment amounts to violation of the right to life. *See* the undermentioned cases:

(i) *Paschim Bengal Khet Mazdoor Society* v. *State of West Bengal*, AIR 1996 SC 2426 paragraphs 9, 15, 16.
(ii) *Parmanand Katara* v. *Union of India*, AIR 1989 SC 2039: (1990) Cri LJ 671.

Medical confidentiality

The Supreme Court has held that if a prospective spouse has an apprehension that the other (prospective) spouse is suffering from AIDS, the former has a right to seek information about the latter's disease from the hospital where blood reports of the latter are available. This right is part of the right to life; *Dr. Tokugha Yepthomo* v. *Apollo Hospital*, JT (1998) 7 SC 626.

Minimum punishment

Minimum punishment provided by statute for anti-social offences is not *per se* unconstitutional; *Inderjeet* v. *State of Uttar Pradesh*, AIR 1979 SC 1867 (Food adulteration).

Natural justice

Natural justice is implicit in article 21. *See* the undermentioned cases:

(i) *Maneka Gandhi* v. *Union of India*, AIR 1978 SC 597, paragraph 56.
(ii) *Sunil Batra* v. *Delhi Administration*, AIR 1978 SC 1675.
(iii) *Hussainara* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1369.
(iv) *State of Maharashtra* v. *Champalal*, AIR 1981 SC 1675.
(v) *Olga Tellis* v. *Bombay Municipal Corporation*, AIR 1986 SC 180, paragraph 31.

Whether the procedure laid down in a particular case is fair, depends on the facts of each case; *Charan Lal Sahu* v. *Union of India*, (1990) 7 SCC 613.

Passports Act

The requirement of natural justice being implicit in article 21, the Passports Act, 1967 would be construed by the court as requiring hearing before taking prejudicial action; *Maneka Gandhi* v. *Union of India*, AIR 1978, SC 597, paragraph 56.

Passport

A citizen's passport cannot be impounded for an indefinite period of time; *Maneka Gandhi* v. *Union of India*, AIR 1978 SC 597, paragraphs 68, 84, 135, 143.

Preventive detention

A State Government ordered preventive detention immediately after revoking the earlier order on the report of the Advisory Board. It failed to defend its action, in court despite two adjournments. Its action was held to violate articles 21 and 22 of the Constitution in the circumstances; *Mohd. Ibrahim Mohd. Sasin* v. *State of Maharashtra*, (1987) Supp SCC 32.

Where a person is detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 the members of the family of the detenu must be informed about the passing of the order of detention and the place of detention. *See* the undermentioned cases:

(i) *A.K. Roy* v. *Union of India*, AIR 1982 SC 710: (1982) 1 SCC 271: (1982) Cri LJ 340.

(ii) *Union of India* v. *Vasanbharthi*, AIR 1990 SC 1216.

Prisoners: Interview

Public spirited citizens should be allowed to interview prisoners in order to ascertain how far article 21 is being complied with. But the interview has to be subject to reasonable restrictions which themselves are subject to judicial review. Special permission should be obtained for tape recording the interview. *See* the undermentioned cases:

(i) *Prabha Dutt* v. *Union of India*, (1982) 1 SCC 1: (1982) Cri LJ 148.

(ii) *Sheela Barse* v. *State of Maharashtra*, AIR 1983 SC 378.

Prisoners: Classification

Classification of prisoners (under prison rules) on the basis of ordinary or dangerous prisoners and prisoners under sentence of death is valid; *Charles Sobhraj* v. *Superintendent, Tihar Jail*, AIR 1978 SC 1675.

Prisoners: Handcuffing

Handcuffing is permitted only in extraordinary circumstances; *Sunil* v. *State of Madhya Pradesh*, (1990) 2 SC 409.

Prisoners: Torture

An undertrial or convicted prisoner cannot be subjected to a physical or mental restraint—

(a) which is not warranted by the punishment awarded by the court, or

(b) which is in excess of the requirements of prisoners discipline, or

(c) which constitutes human degradation.

See the undermentioned cases on the above point:

(i) *Sunil Batra* v. *Delhi Administration*, AIR 1978 SC 1675.

(ii) *Sita Ram* v. *State of Uttar Pradesh*, AIR 1979 SC 745.

(iii) *Sunil Batra* v. *Delhi Administration*, AIR 1978 SC 1579, paragraphs 31 and 42.

(iv) *Javed* v. *State of Maharashtra*, AIR 1985 SC 231, paragraph 4.

(v) *Sher Singh* v. *State of Punjab*, AIR 1983 SC 465.

Prisoner: Wrongful detention

A prisoner already in jail for 8 years (who would have served out the maximum punishment for the offence) cannot be detained on the basis of a production warrant' issued with the application of

mind; *Rama Dass Ram* v. *State of Bihar*, AIR 1987 SC 1333: (1987) Cri LJ 1055: (1987) Supp SCC 143.

Prison restrictions

Prison restrictions amounting to torture, pressure or infliction, beyond that awarded by the court must pass the test of scrutiny with reference to article 21. *See* the undermentioned cases;

(i) *Sheela Barse* v. *State of Maharashtra*, AIR 1983 SC 378.

(ii) *Javed* v. *State of Maharashtra*, AIR 1985 SC 231.

Private industries and pollution

If an industry is established without requisite permission and in blatant disregard of law to the detriment of citizens' right to life, the Supreme Court can interfere to project right to life — Rule of absolute liability applies in such cases; *Indian Council for Enviro-legal Action* v. *Union of India*, AIR 1996 SC 1446, paragraphs 55, 56.

Prostitution

In a case dealing with the plight of prostitutes. The Supreme Court placed emphasis on the need to provide to prostitutes opportunities for education and training so as to facilitate their rehabilitation; *Gaurav Jain* v. *Union of India*, AIR 1997 SC 3021—(3035, 3036).

Public hanging

Public hanging (the execution of death sentence) is violation of article 21, which mandates the observance of a just, fair and reasonable procedure; *Attorney General of India* v. *Lachma Devi*, AIR 1986 SC 467: 1986 Cri LJ 364.

An order passed by the High Court of Rajasthan for public hanging was set aside by the Supreme Court on the ground *inter alia*, that it was violative of article 21; *Attorney General* v. *Lachma Devi*, AIR 1986 SC 467.

Public trial

The requirement of public hearing in court, as a component of fair trial that is subject to the need to hold proceedings in camera, in order to safeguard the public interest and to avoid prejudice to the accused; *Vineet Narain* v. *Union of India*, AIR 1998 SC 889.

Punishment for attempted suicide

Punishment for attempted suicide has been held to be unconstitutional by the Supreme Court on the reasoning that a person cannot be forced to enjoy the right to life to his detriment, disadvantage or dislike; *P. Rathinam Nagbhusan Patnaik* v. *Union of India*, JT (1994) 3 SC 392.

Radiation

In a case filed by the workers of a public sector undertaking claiming compensation for being exposed to the ill-effects of X-ray radiation, the court issued directions as to check and safeguards to be adopted to guard against radiation; *M.K. Sharma* v. *Bharat Electronics Ltd.*, (1987) 3 SCC 231: AIR 1987 SC 1792: (1987) Cri LJ 1908.

Obstruction of movement

Obstruction of movement along highway by the police is constitutional, provided the obstruction is reasonable and in the interest of public order; *Rupinder* v. *Union of India*, AIR 1983 SC 65.

Scheduled Tribes Women

Denial of right of succession to women of Scheduled Tribes amounts to deprivation of their right to livelihood under article 21; *Madhu Kishwar* v. *State of Bihar*, (1996) 5 SCC 125.

Sentence: Plea of guilty

If a sentence is passed on the accused on his plea of guilty, it cannot be enhanced in appeal or revision without his being given a fresh opportunity of defending himself against the charge; *Thippeswamy* v. *State of Karnataka*, AIR 1983 SC 747.

Solitary confinement

Solitary confinement violates the fundamental right guaranteed by article 21; *Sunil Batra* v. *Delhi Administration*, AIR 1978 SC 1675: (1978) Cr LJ 1741.

Special Courts

The Special Courts Bill, 1978 (as originally drafted) was held to lack fair procedure because—

(i) the accused was to be tried by a retired High Court Judge, in whose appointment the *concurrence* of the Chief Justice of India was not required and his service could be terminated at the pleasure of Government.

(ii) there was no provision for transfer of cases from the Special Court on any ground; *In re Special Courts Bill*, 1978, AIR 1979 SC 478, paragraphs 94-98, 145, 147, 156, 161 and 167.

Speedy trial

A procedural law is void if it does not provide for speedy trial. *See* the undermentioned cases:

(i) *Sher Singh* v. *State Punjab*, AIR 1983 SC 465 (Delay in execution).

(ii) *Hussainara* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1360.

(iii) *Hussainara* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1369.

(iv) *Hussainara* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1377.

(v) *Hussainara* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1819.

Speedy trial is a component of personal liberty; *Kartar Singh* v. *State of Punjab*, JT (1994) 2 SC 423.

Accused was charged for offences under the Prevention of Corruption Act, 1847. About 13 years had elapsed since the institution of the F.I.R. Accused applied for quashing the prosecution on the ground of undue delay. High Court rejected the application on the ground that there was only one court of CBI functioning and large member of cases were pending before it. It was held that the rejection was not proper. (Supreme Court issued guidelines in addition to those issued in 1992); *Roy Deo Sharma* v. *State of Bihar*, AIR 1998 SC 3281.

Terrorists Act

To a person arrested under the Terrorists Act, the designated court refused bail. It was held that the High Court, in writ jurisdiction, could not examine the correctness of the view of the designated court; *State of Maharashtra* v. *Abdul Hamid Kajo Mohamed*, JT (1994) 2 SC 1.

Traffic control

Taking into account the need to have proper management and control of traffic, which is a matter of public safety and falls within the ambit of article 21 of the Constitution, the Supreme

Court empowered the authorities under the Motor Vehicles Act to delegate their authority to responsible persons, including members of the public; *M.C. Mehta* v. *Union of India*, AIR 1998 SC 186.

Summary dismissal

A provision for summary dismissal of criminal appeal is not unfair if certain safeguards against arbitrary dismissal are incorporated; *Sita Ram* v. *State of Uttar Pradesh*, AIR 1983 SC 65.

Undertrial prisoners

(a) An undertrial prisoner kept in jail for a period exceeding the maximum prison term awardable on conviction must be released. *See* the undermentioned cases:
  (i) *Hussainara* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1369.
  (ii) *Hussainara* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1377.
  (ii) *Hussainara* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1819.

(b) Persons kept in jail without trial or without charge must be released. *See* the undermentioned cases:
  (i) *Mathew* v. *State of Bihar*, AIR 1984 SC 1854.
  (ii) *Kamaladevi* v. *State of Punjab*, AIR 1984 SC 1895.
  (iii) *Hussainara* v. *State of Bihar*, AIR 1979 SC 1819.

(c) Non-production of the accused (an undertrial prisoner) before the court on dates of trial after obtaining judicial remand is improper. Matter was disposed of, on an assurance given by the State Government. Accused was not entitled to be released on bail merely on above ground but costs were awarded to him; *Ramesh Kumar Singh* v. *State of Bihar*, (1987) Supp SCC 335.

[1]**22. Protection against arrest and detention in certain cases.**—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

---

1. On the enforcement of section 3 of the Constitution (Forty-fourth Amendment) Act, 1978, article 22 shall stand amended as directed in section 3 of that Act. For the text of section 3 of that Act, *see* Appendix III.

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provision of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

Notes on Article 22

Analysis

Article 22 consists of two parts. Clauses (1) and (2) apply to persons arrested or detained under a law otherwise than a preventive detention law. Clauses (4) to (7) apply to persons arrested or detained under a preventive detention law.

Information about grounds of arrest

Information about grounds of arrest is mandatory under clause (1). *See* undermentioned cases:

(a) *Gopalan* v. *State of Madras*, (1950) SCR 88.

(b) *Hansmukh* v. *State of Gujarat*, AIR 1981 SC 28.

Right to consult and to be defended by legal practitioner of his choice

This is also mandatory; *Gopalan* v. *State of Madras*, (1950) SCR 88; *State of Madhya Pradesh* v. *Shobharam*, AIR 1968 SC 1910, 1917. Besides this, there is a right to legal aid, flowing from article 21, even where section 304 of the Code of Criminal Procedure, 1973 does not apply.

Production before the nearest Magistrate

To produce an accused before the nearest magistrate is mandatory; *State of Uttar Pradesh* v. *Abdul Samad*, AIR 1962 SC 1506. Compare section 57 of the Code of Criminal Procedure 1973.

"Arrest"—Meaning of

It should be noted that 'arrest' and 'detention' in articles 22(1) and 22(2) do not cover civil arrest, or deportation of an alien or action by the court itself. *See* the undermentioned cases:

(i) *Madhu Limaye, In re*. AIR 1969 SC 1014, 1019.

(ii) *Collector of Malabar* v. *Hajee*, (1957) SCR 970.

(iii) *State of Uttar Pradesh* v. *Abdul Samad*, AIR 1962 SC 1506.

(iv) *State of Punjab* v. *Ajaib Singh*, (1953) SCR 2564.

Preventive detention

A detention order (for preventive detention) is not void, merely because it does not specify the period, if the parent Act under which it is made does not require that the order should specify the period. In such a case, the order is deemed to be for the maximum period for which detention is authorised. The case was under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (T.N. Act 14 of 1882). Section 3(1) of the Act reads as under:—

(1) The state Government may, if satisfied with respect to any bootlegger or drug offender (or forest offender) or goonda or immoral traffic offender of slum grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order it is necessary so to do make an order directing that such person to be detained'; *T. Devaki* v. *Government of Tamil Nadu*, AIR 1990 SC 1086, 1097, paragraphs, 18 and 19.

Where the applicant was already in custody, detention order under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotrophic Substances Act, 1988 section 33, cannot be made, except where the grounds of detention show, that (i) the detaining authority was aware of the fact that the detenu was already in detention, and (ii) there were compelling reasons justifying such detention, despite the fact that detenu was already in detention. The expression "compelling reasons" here implied that there must be cogent material on the basis of which the detaining authority is satisfied (i) that the detenu is likely to be released in the near future, and (ii) that, taking into account the nature of the antecedent activities of the detenu, it was likely that, after his release from custody, he would indulge in prejudicial activities, and that (iii) it was necessary to detain him in order to prevent him from engaging in such activities. *See* the undermentioned cases:

(i) *Meera Rani* v. *Government of Tamil Nadu*, AIR 1989 SC 2027.

(ii) *Dharmandir Suganchand Chetawal* v. *Union of India*, (1990) 1 JT 184: AIR 1990 SC 1196. (Review cases).

(iii) *Sanjeev Kumar Agarwal* v. *Union of India*, AIR 1990 SC 204.

A detention order passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, section 3 (in the Gurumukhi version), stated that detention was necessary to prevent the detenu from abetting smuggling. But the grounds of detention spoke of "concealing *etc*." of smuggled goods. The order of detention was held to be void; *Vijay Kumar* v. *Union of India*, AIR 1990 SC 1184, reversing (1989) 4 Delhi Lawyers 298. (The reason is, that in such cases, the detenu cannot make an effective representation). In this case, there was also a variance between the English version and the Gurumukhi version of the order of detention.

Extraneous matters mentioned in the documents annexed to the detention order were not referred to, in the grounds of detention. These might have influenced the decision of the detaining authority. Detention was held to be void; *Vashisht Narain Karwaria* v. *State of Uttar Pradesh*, AIR 1990 SC 1272, reversing (1990) Cri LJ NOC 36 (All). (This was a case under the National Security Act, 1980).

In the above case, particulars of offences referred to in the enclosed documents were also not supplied and hence the detenu could not make an effective representation; *Mehboob Khan Nawab Khan Pathan* v. *Police Commissioner, Ahmedabad*, AIR 1989 SC 1803: (1989) 3 SCC 568: (1989) Cri LJ 2111 followed.

On the question of extraneous matter, *see* the undermentioned cases:

(i) *Ram Krishna Paul* v. *Government of West Bengal*, AIR 1972 SC 863.

(ii) *Pushpa* v. *Union of India*, AIR 1979 SC 1953.

(iii) *Merugu Satyanarayana* v. *State of Andhra Pradesh*, AIR 1989 SC 1543.

(iv) *Mehboob Khan Nawab Khan* v. *Commissioner of Police, Ahmedabad*, AIR 1989 SC 1803.

There was delay in passing an order on the representation of detenu under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 section 3. But it did not show negligence, callousness in action or avoidable red tapism. It was held that the order was not vitiated; *Abdul Salam* v. *Union of India*, AIR 1990 SC 1446.

If a foreigner detained under preventive detention law has working knowledge of English then the fact that the order to detention was communicated in English, does not vitiate the detention; *Kubic Dariusz* v. *Union of India*, AIR 1990 SC 605.

Where the detention order specifically states that the order was passed to 'prevent' the detenue from engaging in illegal traffic in psychotropic substance, it means that order was passed so that in future detenues could not indulge in such acts, rules. The order did not deserve challenge on the ground that 'Satisfaction' was not recorded; *State of Maharashtra* v. *Umrani Swaminathan Laxman*, (1997) 11 SCC 426.

Safeguards to be observed in preventive detention have become now a highly specialised subject. What has been provided in Clauses (4) to (7) of article 22 should now be read, alongwith numerous judicial decisions on these Clauses and on various preventive detention laws, as also with the case laws on article 21.

Delay

Real test for article 22(4) is whether delay is explained; *State* v. *Sukhpal*, AIR 1990 SC 23.

Time taken in investigating may excuse delay; *Farooq* v. *Union of India*, (1990) 2 SCJ 225; *Shafiq* v. *D.M.*, (1989) 8 SCJ 568.

Article 21 may supplement article 22

It is now well settled that article 21 may also supplement the various requirements laid down in article 22; *Kamla* v. *State of Maharashtra*, AIR 1981 SC 814; *Sampat* v. *State of Jammu & Kashmir*, AIR 1969 SC 1153.

Language

Where the grounds of detention are served in the detenue's language, there is no irregularity even if the order is not in his language; *Kubic* v. *Union of India*, (1990) 2 SCJ 132, paragraphs 11 and 14.

Documents

Every document casually referred to in the order of detention need not be supplied. Only a document relied on by the detaining authority need be given; *Farooq* v. *Union of India*, (1990) 2 SCJ 225, paragraph 10.

Detention is vitiated, if the following documents are not supplied—

(a) documents which are considered by the detaining authority, or

(b) documents which are vital, though not considered by the detaining authority; *P.U. Abdul Rahiman* v. *Union of India*, AIR 1991 SC 336 paragraph 9 (3 Judge Bench).

Documents, which are vital, should be supplied; *Ahmed Kutty* v. *Union of India*, (1990) 2 SCC 1.

Representation

Representation in case of preventive detention is to be made to the competent authority. To ascertain who is the competent authority, the scheme relating to the authority is to be examined; *Veeramani* v. *State of Tamil Nadu*, JT (1994) 1 SC 350.

Consideration of representation

Consideration by the Board is an additional safeguard. It is not a substitute for consideration by the Central Government; *Gracy* v. *State of Kerala*, AIR 1991 SC 1090.

If a representation is sent to the Chairman, Advisory Board through the Superintendent of the jail, the Central Government must consider it, Even when the detenu's representation under the COFEPOSA Act is received after the order is confirmed by Government, the Government must consider it; *K.M. Abdulla Kumhi and B.L. Abdul* v. *Union of India*, AIR 1991 SC 574, paragraphs 19-20 (CB).

Government cannot delay consideration of the representation on the ground that it awaits the Board's advice; *Issac Babu* v. *Union of India*, (1990) 4 SCC 135. (Delay of 11 months).

Right against Exploitation

23. Prohibition of traffic in human beings and forced labour.—(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Notes on Article 23

Scope

This article prohibits—

(a) traffic in human beings;

(b) *begar*; and

(c) other similar forms of forced labour.

An exception is made for compulsory service for public purposes, under clause (2). Although clause (2) does not say so, obviously the imposition of such service has to be by law, as a mere executive order of the State would not suffice for the purpose. It has been held that even if remuneration is paid for the labour still, if it is 'forced', then it is unconstitutional. Judicial decisions in support of these propositions are:

(i) *People's Union* v. *Union of India*, AIR 1982 SC 1473.

(ii) *Sanjit* v. *State of Rajasthan*, AIR 1983 SC 328.

Legislation relevant to article 23

Article 23(1) envisages legislation for the enforcement of the constitutional prohibition. Section 374 of the Indian Penal Code is one such enactment, though a pre-Constitution one. Specific legislation also exists regarding immoral traffic in women and girls and regarding bonded labour.

Prostitutes

Directions were issued by the Supreme Court in public interest litigation, as to the children of prostitutes. *See* the undermentioned cases:

(i) *Vishal Jeet* v. *Union of India*, AIR 1990 SC 1412: (1990) 3 SCC 318, paragraphs 3, 7 and 18.

(ii) *Gaurav Jain* v. *Union of India*, AIR 1990 SC 292.

(iii) *Gaurav Jain* v. *Union of India*, AIR 1997 SC 3021.

Traffic in human beings includes *devadasis*; *Vishal Jeet* v. *Union of India*, AIR 1990 SC 1412.

Notes on child labour

The Supreme Court has issued elaborate guidelines to child labour. Child labour shall not be engaged in hazardous employment. There shall be set up child labour rehabilitation welfare fund in which offending employer should deposit Rs. 20,000. Adult member of such child should be given employment; *M.C. Mehta* v. *State of Tamil Nadu*, AIR 1997 SC 699.

Supreme Court has further directions as to education, health and nutrition of child labour. The judgment is a sequee to the judgment in—

(i) *M.C. Mehta* v. *State of Tamil Nadu*, AIR 1997 SC 699.

(ii) *Bandhua Mukti Morcha* v. *Union of India*, AIR 1997 SC 2218.

24. Prohibition of employment of children in factories, *etc*.—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Notes on Article 25

Scope and object

With article 25 begins a group of provisions which ensure equality of all religions, thereby promoting secularism. The emphasis in this article is on the practice of religious freedom by individuals. The emphasis in article 26 is on the establishment of institutions. But article 25 may be available even where the practice of religion by individuals is through institutions.

The components

The freedom guaranteed by article 25 is to 'profess, practice and propagate' religion. The act of 'practice' is concerned primarily with religious worship, ritual and observations. Propagation is concerned with right to communicate beliefs to another person or to expound the tenets of one's religion, but does not include a right to forcible conversions; *Stainislaus* v. *State of Madhya Pradesh*, AIR 1977 SC 908.

The logic underlying the constitutional guarantee regarding 'practice' of religion is that religious practices are as such a part of religion as religious faith or doctrines; *Commissioner, Hindu Religious Endowment* v. *Lakshmindra*, (1954) SCR 1005.

Religion

(a) 'Religion' is a matter of faith but belief in God is not essential to constitute religion.

(b) Doctrines of each religion constitute its essential part, but the court is competent to examine them.

(c) 'Philosophy' is different from religion.

Following decisions support the above propositions as to the scope of 'religion':—

(i) *Commissioner, Hindu Religious Endowment* v. *Lakshmindra*, (1954) SCR 1005.

(ii) *Divyadarsan v State of Andhra Pradesh*, AIR 1970 SC 181, 188.

(iii) *Quareshi* v. *State of Bihar*, (1959) SCR 629.

(iv) *Ramanuja* v. *State of Tamil Nadu*, AIR 1959 SC 586.

(v) *Sarup* v. *State of Punjab*, AIR 1959 SC 860.

(vi) *Moti Das* v. *Sahi*, AIR 1959 SC 942.

(vii) *Mittal* v. *Union of India*, AIR 1983 SC 1, paragraphs 119, 122 and 123.

Ananda Marg

Ananda Margis have a right to perform "*tandava*"; *Acharya Jagadiswarananda Avadhuta* v. *Police Commissioner, Calcutta*, AIR 1990 Cal 336.

Foreigners

An order issued under the Foreigners Act, 1946, imposing a duty on petitioners, cannot be challenged by the petitioners on the ground that they are professing Christianity and the order infringes article 25 of the Constitution; *P. Innaiah* v. *Government of India*, AIR 1990 AP 203.

Restrictions that can be imposed

By article 25(1), the Constitution itself makes freedom of religion subject to—

(a) public order.

(b) morality.

(c) health.

(d) 'other provisions of this Part'—which, *inter alia*, includes clause (b) of article 25(2) itself; *Venkataramana* v. *State of Mysore*, AIR 1968 SC 255 267.

The expression 'public order' occurs elsewhere in the Constitution—*e.g.* article 19(2)—and should bear the same meaning here also. For the meaning of 'public order' under the Constitution, *See* the undermentioned cases:

(i) *Virendra* v. *State of Punjab*, AIR 1957 SC 896

(ii) *Ramji Lal* v. *State of Uttar Pradesh*, AIR 1957 SC 620 (Discusses article 25 also).

(iii) *State of Rajasthan* v. *Chawla*, (1959) Supp (1) SCR 904 (Use of loudspeakers).

(iv) *Dalbir* v. *State of Punjab*, AIR 1962 SC 1106.

(v) *Madhu Limaye* v. *State of Punjab*, AIR 1962 SC 1106.

Priests

Service of a priest is a secular activity and can be regulated by the State under article 25(2); *Bhuri Nath* v. *State of Jammu & Kashmir*, AIR 1997 SC 1711.

Regulation by the State

Article 25, clause 2(a) saves the power of the State to regulate or restrict secular activities associated with religious practice. These restrictions or regulations should be primarily concerned with the *secular* aspects of religious practice rather than with the essentials of religion as per judicial pronouncement. This view, enunciated for the first time in *Ratilal* v. *State of Bombay*, (1954) SCR 1055, has been followed in all later cases though the test is not easy to apply. What is the dividing line between the two is for the court to determine. But, subject to that, the religious denomination is entitled to lay down its rites and ceremonies—an aspect illustrated by *Ramanuja* v. *State of Tamil Nadu*, AIR 1972 SC 1586.

As the various limbs of article 25, particularly article 25(1) and article 25(2)(a) are interconnected, it is advisable to study a number of cases when a concrete question arises. The following list of cases would be helpful:—

1. *Ratilal* v. *State of Bombay*, (1954) SCR 1055 (Legislation on public trusts).
2. *Ramji Lal* v. *State of Uttar Pradesh*, AIR 1957 SC 620. (Section 153A of the I.P.C.).
3. *Saifuddin* v. *State of Bombay*, AIR 1962 SC 853, 863 (Excommunication from).
4. *Venkataramana* v. *State of Madras*, AIR 1958 SC 255, 267 (Religious practices).
5. *Suryapalsingh* v. *State of Uttar Pradesh*, (1952) SCR 1056, 1090.
6. *Narendra* v. *State of Gujarat*, AIR 1974 SC 2098, paragraph 25.
7. *Commr., H.R.E.* v. *Lakshmindra*, (1954) SCR 1005 (Religious trusts).
8. *Divyadarsan* v. *State of Andhra Pradesh*, AIR 1970 SC 181, 188 (Day to day administration of religious trust).
9. *Stainislaus* v. *State of Madhya Pradesh*, AIR 1977 SC 908 (Freedom of conscience).
10. *Ramanuja* v. *State of Tamil Nadu*, AIR 1972 SC 1586 (Scrutiny of essentials of religion).
11. *Quareshi* v. *State of Bihar*, (1959) SCR 629 (Ban on cow slaughter).
12. *Sarup* v. *State of Punjab*, AIR 1959 SC 860, 866 (Committee of administration).
13. *Moti Das* v. *Sahi*, AIR 1959 SC 942, 949 (Administration of religious endowment).
14. *Mittal* v. *Union of India*, AIR 1983 SC 1, paragraphs 119, 122 and 123 (Aurobindo University).
15. *Saifuddin* v. *State of Bombay*, AIR 1962 SC 853, 864 (Essentials and non-essentials of religion).
16. *Durgah Committee* v. *Hussain*, AIR 1961 SC 1402, 1415 (Judicial scrutiny).
17. *Yajnapurusdasji* v. *Muldas*, AIR 1966 SC 1119, 1127.

26. Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

Notes on Article 26

Scope and object

Article 26 protects—(i) religious denominations, and (ii) selections thereof. The four rights guaranteed by the article are subject to 'public order, morality and health'—as in article 25. But

article 26 is not subject to other provisions of Part III—an aspect noticed in *Narendra* v. *State of Gujarat*, AIR 1974 SC 2098.

Denomination

In the case of a denomination tenets are important, thus distinguishing it from an individual; *Acharya Jagadishwarananda Avadhuta* v. *Commissioner of Police*, AIR 1990 Cal 336.

Right to own property

The right to own and administer property is not an absolute right. It is subject to reasonable regulation by the State, the important condition being that such regulation should not affect the survival of the religious institution itself; *Narendra* v. *State of Gujarat*, AIR 1974 SC 2098.

On this basis, acquisition of its property (under the authority of law), is valid, subject to the condition mentioned above; *Suryapal* v. *State of Uttar Pradesh*, (1952) SCR 1056.

Directive principles

In this context, courts have also relied on the Directive Principles of State Policy (particularly article 37), and have taken the view, that property of a religious institution can be acquired under article 31A(1)(a), for effecting agrarian reform. It may also be acquired, if it exceeds the ceiling allowed by the relevant legislation. But the core of the religious institution should not be interfered with; *Narendra* v. *State of Gujarat*, AIR 1974 SC 2098.

Affairs of religion

As under article 25, under article 26 also, courts have made a distinction between the essentials of religion and non-essentials. *See* the undermentioned decisions:

(i) *Ratilal* v. *State of Bombay*, (1954) SCR 1055.

(ii) *Sarup* v. *State of Punjab*, AIR 1959 SC 860.

(iii) *Ramanuja* v. *State of Tamil Nadu*, AIR 1961 SC 1402.

(iv) *Acharya Jagadishwaranand Avadhuta* v. *Police Commissioner*, AIR 1984 SC 51

Rituals

Articles 25 and 26 extend to rituals also and are not confined to doctrine. However, courts have to be pragmatic. Right to manage a temple is not an integral part of religion. It can be regulated by law; *Sri Adi Visheshwara of Kashi Vishwanath Temple* v. *State of Uttar Pradesh*, (1997) 4 SCC 606.

Administration of property

The broad principle is that a State made law can regulate the administration of property of religious endowment, but the law cannot take away the right of administration altogether. *See* the undermentioned decisions:

(i) *Ratilal* v. *State of Bombay*, (1954) SCR 1055.

(ii) *Govindlalji* v. *State of Rajasthan*, AIR 1963 SC 1638.

(iii) *Saifuddin* v. *State of Bombay*, AIR 1962 SC 853.

(iv) *Ram* v. *State of Punjab*, AIR 1981 SC 1576.

(v) *Narendra* v. *State of Gujarat*, AIR 1974 SC 2092.

(vi) *Azeez* v. *Union of India*, AIR 1968 SC 662.

Common burden

A common burden (*e.g.* land revenue) imposed on all does not violate article 26(c) and article 26(d); *Government of Tamil Nadu* v. *Ahobila*, AIR 1987 SC 245.

27. Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Notes on Article 27

Article 27 is one of the essential consequences of secularism. A 'tax' is a compulsory exaction of money for public purpose. If the State exacts money through a tax whose proceeds are assigned for the benefit of a particular religion, obviously the State favours, patronises and supports that particular religion. Hence the prohibition against such taxes. The distinction between 'tax' and 'fee' has been adhered to in the context of this article also so that fees for secular regulation can be charged for defraying expenses of administrative regulation. *See* the cases cited under article 25 *supra*.

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Cultural and Educational Rights

29. Protection of interests of minorities.—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Notes on Article 29

The leading cases on article 29 are:

(i) *Kerala Education Bill In re*, AIR 1958 SC 956.

(ii) *Ahmedabad St. Xaviers College Society* v. *State of Gujarat*, AIR 1974 SC 1389.

(iii) *State of Bombay* v. *Bombay Education Society*, (1955) 1 SCR 568: AIR 1954 SC 561.

(iv) *Gujarat University* v. *Shri Krishna*, AIR 1963 SC 703.

(v) *D.A.V. College* v. *State of Punjab*, AIR 1971 SC 1731.

Although, commonly article 29(1) is assumed to relate to minorities, its scope is not necessarily so confined, as it is available to "any section of citizens resident in the territory of India". This may well include the majority, as Ray, C.J. pointed out in the *Ahmedabad St Xaviers College Society* v. *State of Gujarat*, AIR 1974 SC 1389.

As regards article 29(2), it should be read subject to article 15(4), (as inserted in 1951), permitting special provision for backward classes, thus overriding the earlier decision in *State of Madras* v. *Champakam Dorairajan*, (1951) SCR 525. *See B.S.H.K.P.* v. *Union of India*, (1985) 2 SCC 644.

An important consequence of the 'right to conserve' one's script is that citizens have the right to agitate for the protection of their language. 'Political' speeches for the conservation of the language of a section of the citizens cannot, therefore, be regarded as a corrupt practice within the meaning of section 123(3) of the Representation of the People Act, 1951; *Jagdev Singh Sidhanti* v. *Partap Singh*, AIR 1965 SC 183, 188.

Regional language

Not holding an entrance examination (pre-medical test), in any particular language *viz.* Hindi or any regional language, does not violate article 29(2); *Hindi Hitrakshak Samiti* v. *Union of India*, AIR 1990 SC 851, paragraph 6.

Minorities

Although the word 'minorities' occurs in the marginal not to article 29, it does not occur in the text. The original proposal of the Advisory Committee in the Constituent Assembly recommended the following:—

"(1) *Minorities* in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect." [B. Siva Rao, "Select Documents" (1957) Vol. 2, page 281.]

But after the clause was considered by the Drafting Committee on 1st November, 1947, it emerged with substitute of 'section of citizens'. [B. Siva Rao, Select Documents (1957). Vol. 3 pages, 525-26. Clause 23, Draft Constitution]. It was explained that the intention had always been to use 'minority' in a wide sense, so as to include (for example) Maharashtrians who settled in Bengal. (7 C.A.D. pages 922-23].

30. Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

[1][(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Notes on Article 30

Scope

Article 30 is confined to minorities—whether based on religion or language—and unlike article 29(1), it cannot be availed of by any 'section of citizens'. At the same time, article 30(1) is not confined to the conservation of language, script or culture—unlike article 29(1). It may be, that the right given by article 29(1) is fortified, as regards minorities, by article 30(1). But the Two rights

---

1. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 4 (w.e.f. 20-6-1979).

are separate; *Rev. Father Proost* v. *State of Bihar*, AIR 1969 SC 465. The right to establish an educational institution under article 30 is not confined to the conservation of language, script or culture. This was pointed out by Mathew, J. in *Ahmedabad St. Xaviers College Society* v. *State of Gujarat*, AIR 1974 SC 1389.

Article 30 confers two rights:

(a) right to establish an institution, and

(b) right to administer it. The former means the right to create the institution, while the latter (right to administer) means that the management of the affairs of the institution must be free of external control, so that the founders or their nominees can manage the institution as they think fit and in accordance with their ideas of how best the interest of the community in general and the institution in particular will be served; *Md. Joynal Abedin* v. *State*, AIR 1990 Cal 193, 201, 202 paragraphs 12 and 13.

Autonomy of a minority institution cannot be completely taken away; *St. Stephen's College* v. *University of Delhi*, (1992) SCC 558.

Crucial words

In article 30(1), the crucial words are:

(a) minorities;

(b) establish and administer;

(c) educational institutions;

(d) of their own choice.

The words 'of their own choice' are important; *Shri Krishna* v. *Gujarat University*, AIR 1962 Guj 86 (FB). The word 'establish' has been construed by Wanchoo, C.J. in *S. Azeez Basha* v. *Union of India*, AIR 1968 SC 662, 670.

Minorities

The word 'minority' has not been defined in the Constitution. The Motilal Nehru Report (1928) showed a prominent desire to afforded protection to minorities, but did not define the expression. The Sapru Report (1945) also proposed, *inter alia*, a Minorities Commission but did not define *minority*. The Year Book on Human Rights (1950), page 490. The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities has defined 'minority' (by an inclusive definition), as under:

> (i) The term 'minority' includes only those non-document groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population; (ii) such minorities should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics; and (iii) such minorities must be loyal to the State of which they are nationals.

Article 27 of the International Convenient on Civil and Political Rights does not define the expression but gives the following right to them:—

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, a community with the other members of the group, to enjoy their own culture, to profess and practice their own religion or to use their own language.

Minorities based on religion or language

Backward classes are not minorities within article 30. As K.M. Munshi [5 C.A.D. page 227] pointed out, "The Harijans generally known as the Scheduled Castes, are neither a racial minority

nor a linguistic minority..... The Harijans are part and parcel of Hindu community." Following judicial decisions are relevant as to the concept of 'minorities':—

(i) *Kerala Education Bill, In re*, AIR 1958 SC 956, 976, 977.

(ii) *Shri Krishna* v. *Gujarat University*, AIR 1962 Guj 88 (Shelat, C.J.) (A judgment worth perusal).

(iii) *Aldo Maria Pathroni* v. *E.C. Keshavan*, AIR 1965 Ker 75 (M.S. Menon, C.J.).

(iv) *Sree Jain Swetamber Terapanthi Vidyalaya* v. *State of West Bengal*, AIR 1982 Cal 101, 111 (B.C. Ray, J.).

(v) *D.A.V. College* v. *State of Punjab*, AIR 1971 SC 1731, 1744 (Reddy. J.).

(vi) *Arya Samaj Education Trust* v. *Director of Education*, AIR 1976 Del 207, 218.

(vii) *D.A.V. College* v. *State of Punjab*, AIR 1971 SC 1731.

(viii) *D.A.V. College* v. *State of Punjab*, AIR 1971 SC 1737, 1742.

Regulatory laws

The right under article 30(1) is subject to the regulatory power of the State. Article 30(1) is not a charter for maladministration. Legislation for social welfare and similar regulatory measure do not constitute an infringement of article 30(1). So long as the minority is not deprived of the actual management of the institution, a law regulating certain matters concerning industrial relation, academic matters and the like does not infringe article 30(1); *Virendra Nath* v. *Delhi*, (1990) 2 SCC 307.

The above broad statement of the legal position is illustrated by, and draws support from, the following cases:—

(i) *Kerala Education Bill, In re*. AIR 1958 SC 956.

(ii) *State of Kerala* v. *Very Rev. Mother Provincial*, AIR 1970 SC 2079: (1970) 2 SCC 417: (1971) 1 SCR 734.

(iii) *Ahmedabad St. Xaviers College Society* v. *State of Gujarat*, (1974) 1 SCC 717: AIR 1974 SC 1389.

(iv) *Lily Kurian* v. *St. Levina*, AIR 1979 SC 52: (1979) 2 SCC 127: (1979) 1 SCR 820.

(v) *All Saints High School* v. *Government of Andhra Pradesh*, (1980) 2 SCC 478.

(vi) *Frank Anthony Public School Employees' Association* v. *Union of India*, (1986) 4 SCC 707: (1987) 2 ATC 35.

(vii) *Christian Medical College Hospital Employees' Union* v. *C.M.C. Vellore Association*, (1987) 4 SCC 691, 708, 812, 717 [Reversing *C.M.C. Vellore Association* v. *Govt. of India* (1983) 1 Lab LN 373].

(viii) *Y. Theclamma* v. *Union of India*, (1987) 2 SCC 516, 527, 528: AIR 1987 SC 1210: (1987) Lab IC 907.

(ix) *Bihar State Madarsa Board* v. *Madarsa Hanafra*, AIR 1990 SC 995.

(x) *St. Stephen's College* v. *University of Delhi*, (1992) 1 SCC 558.

Educational standards

Right of a minority to administer educational institution has been dealt with by the Madhya Pradesh High Court. It has been held that the provisions contained in paragraph 17(1) of statute 28, Devi Ahilya University, in regard to the Constitution of the Selection Committee in the case of teaching posts [except in so far as they provide in sub-clause (a) that the *Kulpati* or his nominee shall be Chairman of such Committee] are aimed at ensuring educational standards and maintaining excellence thereof and cannot be said to be in violation of article 30(1) of the Constitution. The same is the position with regard to clause (1) of the said paragraph 17(1), which deals with the

constitution of a Selection Committee in the case of Principal. Sub-clause (a), which provides that the *Kulpati* (or his nominee), shall be the Chairman, is void. But the other sub-clauses do not offend article 30(1) of the Constitution, inasmuch as they have apparently been enacted for ensuring educational standards and maintaining excellence thereof; *The Islamia Karimia Society, Indore* v. *Devi Ahilya Vishwavidyalaya, Indore*, AIR 1988 MP 22.

Reasonable regulations can be made to prescribe the syllabus; *State of Tamil Nadu* v. *Joseph*, (1991) 3 SCC 87.

Right not absolute

The right under article 30 is not absolute. The State has power to regulate the administration of the institutions established by the minority communities. State has the right to regulate the administration or religious institutions. Right to "administer" does not include right to maladminister. *See* the following cases:—

(i) *Reference on Kerala Education Bill*, AIR 1958 SC 956.

(ii) *Rev. Father* v. *State of Bihar*, AIR 1969 SC 465.

Maladministration

Maladministration would defeat the very object of article 30, which is to promote excellence of minority institutions in the field of education; *All Saints High School* v. *Government of Andhra Pradesh*, AIR 1980 SC 1042, paragraphs 12, 65.

Conditions

While the State has the right to impose reasonable conditions, it cannot impose such conditions as well substantially deprive the minority community of its rights guaranteed by article 30(1). Surrender of fundamental rights cannot be exacted as the price of aid doled out by the State. *See* the following cases:—

(i) *Ref on Kerala Education Bill*, AIR 1958 SC 956.

(ii) *Rev. Father* v. *State of Bihar*, AIR 1969 SC 465.

Conditions for aid or recognition

As a condition of granting aid or recognition to an institution coming under article 30(1), the State may impose reasonable regulations for the purpose of ensuring sanitation, competence of teachers, maintenance of discipline and the like. *See* the following cases:—

(i) *Ref on Kerala Education Bill*, AIR 1958 SC 956.

(ii) *Rev. Father* v. *State of Bihar*, AIR 1969 SC 465.

Conditions that are void

Thus, the State cannot prescribe a condition that if an institution, including one entitled to the protection of article 30(1), seeks to receive State aid, it must submit to the condition that the State may take over the management of the institution or acquire it, under certain conditions. Such a condition would completely destroy the right of the community to "administer" the institution; *St. Xavier's College* v. *State of Gujarat*, AIR 1974 SC 1389, paragraphs 6, 73, 124.

Similarly, there is no constitutional or other right for an institution to receive State recognition, and the State may impose reasonable conditions for receiving its recognition, *e.g.* as to the qualifications or pay of teachers or qualifications of governing bodies. *See* the undermentioned cases:—

(i) *Frank Anthony Association* v. *Union of India*, AIR 1987 SC 311, paragraphs 13, 15-17.

(ii) *G.F. College* v. *Agra University*, AIR 1975 SC 1820.

But the State cannot impose conditions which are of such a nature, that the acceptance thereof would virtually deprive a minority community of the right guaranteed by article 30(1); *Sidhraj* v. *State of Gujarat*, AIR 1963 SC 540.

Standards

A "standard" of education is not a part of "Management" as such; *All Saints High School* v. *Government of Andhra Pradesh*, AIR 1980 SC 1042, paragraphs 12, 65.

The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions; *State of Kerala* v. *Mother Provincial*, AIR 1970 SC 2079, 2082.

Presentation of the institution

The "regulation" by the State cannot go to the length of annihilating the right guaranteed by article 30(1). Regulation must be related to the interests of the institution as an educational institution (and not merely in the interests of the general public); *St. Xavier's College* v. *State of Gujarat*, AIR 1974 SC 1389, paragraphs 6, 73, 124.

Right to receive aid

There is no constitutional right to receive State aid outside article 337. But if the State does, in fact, grant aid to educational institutions, it cannot impose upon the right to receive such aid such conditions as would virtually deprive the members of a religious or linguistic community of their right under article 30(1); *St. Stephen's College* v. *Delhi University*, AIR 1992 SC 1630.

Condition as to fees

The State cannot impose (as a condition precedent to State recognition) that the institution should not charge any fees in the primary classes. For, if there is no provision in the State law or regulation as to how this fundamental loss is to be recouped, then institutions solely or primarily dependent upon the fees charged in the primary classes cannot exist at all. Such a condition would contravene article 30(1). The cases on this point are:

(i) *Reference on Kerala Education Bill*, AIR 1958 SC 956.

(ii) *Rev. Father* v. *State of Bihar*, AIR 1969 SC 465.

Requirements of regulation

In short, in order to be consonant with article 30(1), a regulation imposed by the State upon a minority institution should satisfy the following requirements:—

(a) it must be reasonable;

(b) it must be regulative of the educational character of the institution;

(c) it must be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.

Sidhrajbhai v. *State of Gujarat*, AIR 1963 SC 540.

(d) It must not annihilate the institution.

(i) *Sidhrajbhai* v. *State of Gujarat*, AIR 1963 SC 540.

(ii) *St. Jon's T.T. Institute (for Women), Madurai* v. *State of Tamil Nadu*, AIR 1994 SC 43, paragraph 6;

(iii) *Manohar Harries Walters* v. *The Basel Mission Higher Education Centre, Dharwad*, AIR 1991 SC 2230.

(iv) *State of Kerala* v. *Mother Provincial*, AIR 1970 SC 2079.

[1][***]

---

1. The sub-heading "*Right to Property*" omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 5, (w.e.f. 20-6-1979).

31. Compulsory acquisition of property.—[*Rep. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 6 (w.e.f. 20.6.1979).*]

[1][*Saving of certain Laws*]

[2]**[31A. Saving of laws providing for acquisition of estates, etc.**—[3][(1) Notwithstanding anything contained in article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [4][article 14 or article 19]:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:]

[5][Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.]

(2) In this article,—

[6][(a) the expression "estate", shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 3 (w.e.f. 3-1-1977).
2. Ins. by the Constitution (First Amendment) Act, 1951, sec. 4 (with retrospective effect).
3. Subs. by the Constitution (Fourth Amendment) Act, 1955, sec. 3 for clause (1) (with retrospective effect).
4. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 7, for "article 14, article 19 or article 31" (w.e.f. 20-6-1979).
5. Ins. by the Constitution (Seventeenth Amendment) Act, 1964, sec. 2.
6. Subs. by the Constitution (Seventeenth Amendment) Act, 1964, sec. 2, for sub-clause (a) (with retrospective effect).

(i) any *jagir*, *inam* or *muafi* or other similar grant and in the States of [1][Tamil Nadu] and Kerala, any *janmam* right;

(ii) any land held under *ryotwary* settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, [2][*raiyat*, under-*raiyat*] or other intermediary and any rights or privileges in respect of land revenue.

Notes on Article 31A

Land reform legislation

(1) Laws providing for acquisition of estates, take over of corporation, *etc.*, have been saved by article 31A against challenge on the ground of alleged infringement of article 14 or article 19.

(2) By article 31B, Acts and Regulations specified in the Ninth Schedule have been saved against challenge on the ground of inconsistency with, taking away or abridging any *fundamental right*. However, after the decision in *Keahavananda's* case, inclusion in the Ninth Schedule of any law is open to challenge on the ground of damage to the basic structure of the Constitution; *Keshavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461; *Waman Rao* v. *Union of India*, AIR 1981 SC 271; *Srinivasa* v. *State of Karnataka*, AIR 1987 SC 1518, paragraphs 6-7 Article 31C, inserted by The Constitution (Twenty-fifth Amendment) Act, 1971, protected laws giving effect to the Directive Principles in article 39(b) and 39(c) from unconstitutionality on the ground of contravention of articles 14, 19 and 31. By the 42nd Amendment, 1976, the protection was extended to legislation for implementation of any directive principle. But the Supreme Court in 1980 (by majority) held this extension of the protection to be unconstitutional on the ground that such an omnibus withdrawal of legislation from judicial review would undermine the basic structure of the Constitution. In 1983, the Supreme Court has declared the relevant observation in its 1980 judgment to be obiter. *See* the following cases:—

(i) *Minerva Mills Ltd.* v. *Union of India*, AIR 1986 SC 2030.

(ii) *Minerva Mills Ltd.* v. *Union of India*, AIR 1980 SC 1789, paragraphs 30, 64 70 and 80.

(iii) *Sanjeev Coke Manufacturing Co.* v. *Bharat Coking Coal*, AIR 1983 SC 239, paragraphs 13, 14.

Article 31C in its main paragraph, second part (as amended by The Constitution (Twenty-fifth Amendment) Act, 1971) provides as under:

> and no law containing a declaration that it is for giving effect so such policy shall be called in question in any court on the ground that it does not give effect to such policy.

In 1973. The Supreme Court struck down this portion as unconstitutional on the ground that it was beyond the competence of the Constitution (Twenty-fifth Amendment) Act, 1971 (Which introduced article 31C) to take away the power of judicial review to question whether a particular law which professed to give effect to a Directive Principles was, in reality, a law having that object or whether that was only its colourable purpose; *Keshavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461.

---

1. Subs. by the Madras State (Alteration of Name) Act, 1968 (53 of 1968), sec. 4, for "Madras" (w.e.f. 14-1-1969).
2. Ins. by the Constitution (Fourth Amendment) Act, 1955, sec. 3 (with retrospective effect).

It follows that the court can still consider whether a particular law purporting to implement any directive principal is valid if it finds that the nexus between that law and the Directive Principle relied on is illusory or colourable or whether it has 'direct and reasonable' nexus with the directive principle in article 39(b) or article 39(c); *Bhim Singhji* v. *Union of India*, AIR 1981 SC 234, paragraph 2; *State of Maharashtra* v. *Basantibai*, (1986) 2 SCC 516, paragraph 13.

A law providing for agrarian reform need not provide for land ceilings; *Union Territory of Goa, Daman & Diu* v. *Laxmibai*, AIR 1990 SC 1771, paragraph 9.

[1][**31B. Validation of certain Acts and Regulations.**—Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.]

Notes on Article 31B

Article 31B saves conflict with any fundamental right, including the right guaranteed by article 19(1)(g); *Niyami* v. *Union of India*, AIR 1990 SC 2128.

[2][**31C. Saving of laws giving effect to certain directive principles.**—Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing [3][all or any of the principles laid down in Part IV] shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [4][article 14 or article 19] [5]*[and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy]:*

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.]

Notes on Article 31C

As to effect of article 31C on article 19 see *Elizabeth* v. *State of Kerala*, AIR 1991 Ker 161 (FB).

Article 31C does not bar judicial review to examine the nexus between impugned law and article 39; *Assam Sillimanite* v. *Union of India*, AIR 1992 SC 938: (1992) Supp (1) SCC 692.

---

1. Ins. by the Constitution (First Amendment) Act, 1951, sec. 5.
2. Ins. by the Constitution (Twenty-fifth Amendment) Act, 1971, sec. 3 (w.e.f. 20-4-1972).
3. Subs. by the Constitution (Forty-second Amendment) Act, 1976 sec. 4, for "the principles specified in clause (b) or clause (c) of article 39" (w.e.f. 3-1-1977). Section 4 has been declared invalid by the Supreme Court in *Minerva Mills Ltd.* v. *Union of India*, (1980) 2 SCC 591.
4. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 8, for "article 14, article 19 or article 31" (w.e.f. 20-6-1979).
5. In *Kesavananda Bharati* v. *The State of Kerala*, (1973) Supp SCR 1, the Supreme Court held the provision in italics to be invalid.

[1][**31D. Saving of laws in respect of anti-national activities.**—[*Rep. by the Constitution (Forty-third Amendment) Act, 1977, section 2 (w.e.f. 13.4.1978).*]]

Right to Constitutional Remedies

32. Remedies for enforcement of rights conferred by this Part.—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Notes on Article 32

Variety of rights coming up for enforcement

Right given by law or recognized by law can be analysed into the following categories:—

(a) fundamental rights given by the Constitution;
(b) constitutional rights not having the status of fundamental rights;
(c) statutory rights;
(d) rights flowing from subordinate legislation;
(e) rights based on case law;
(f) customary rights;
(g) contractual rights.

Scope of article 32

Only fundamental rights falling within category (a) above can be enforced under article 32. Cases illustrating this proposition about the scope of article 32 are the following:—

(i) *Haji Esmail* v. *Competent Officer*, AIR 1967 SC 1244.

(ii) *Kuriakose* v. *State of Kerala*, AIR 1977 SC 1509.

Supreme Court cannot determine an issue not involving fundamental right; *Indian Express Newspapers* v. *Union of India*, (1986) 1 SCC 633, paragraphs 200 and 207.

Price fixation

Price fixation is not within the province of the court. Judicial review is exhausted when there is found to be a rational basis for the conclusions reached by the concerned authority. *See* the undermentioned decisions:

(i) *Union of India* v. *Cynamide Ltd.*, AIR 1987 SC 1802, 1807: (1987) 2 SCC 720, 736.

(ii) *Gupta Sugar Works* v. *State of Uttar Pradesh*, AIR 1987 SC 2353: (1987) Supp SCC 476, 481.

(iii) *Shri Sitaram Sugar Co. Ltd.* v. *Union of India*, AIR 1990 SC 1277, paragraphs 8 and 58.

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 5 (w.e.f. 3-1-1977).

Administrative Tribunal

Section 28 of the Administrative Tribunal Act, 1985 has left untouched the writ jurisdiction of the Supreme Court; *Chopra* v. *Union of India*, AIR 1987 SC 357.

Thus wide power under article 323A(2)(d) of the Constitution has not been exercised.

Administrative Tribunals themselves have writ procedure under section 14(1) of the Administrative Tribunals Act, 1985.

Supreme Court and High Court: Concurrent Jurisdiction

(a) On the text of articles 32 and 266, where a fundamental right is involved, a party should be free to approach either of the two courts. And this, in fact, has been the earlier judicial approach; *M.K. Gopalan* v. *State of Madhya Pradesh*, (1955) 1 SCR 168, 174. In fact, some decisions have pointed out that since the remedy under article 32(1) is itself a fundamental right, the Supreme Court is under duty to grant relief for violation of a substantive fundamental right. *See* the undermentioned cases:

(i) *Kochunni* v. *State of Madras*, AIR 1959 SC 725, 729.

(ii) *Tata Iron & Steel Co.* v. *Sarkar*, AIR 1961 SC 65.

(iii) *Bishan Das* v. *State of Punjab*, AIR 1961 SC 1570.

(iv) *Kharak Singh* v. *State of Madhya Pradesh*, AIR 1963 SC 1295.

Even still stronger are decisions holding article 32 to be a basic feature of the Constitution which cannot be taken away by even amending the Constitution; *Fertiliser Corporation of India* v. *Union of India*, AIR 1981 SC 344, paragraph 11.

(b) Notwithstanding the above position, the Supreme Court has, in the following decisions stated that where relief through High Court is available under article 226, the party should first approach the High Court:—

(i) *P.N. Kumar* v. *Municipal Corporation of Delhi*, (1987) 4 SCC 609, 610, 611.

(ii) *Kanubhai Brahmbhatt* v. *State of Gujarat*, AIR 1987 SC 1159.

It is submitted with great respect that this view goes against the intendment of the Constitution and is contrary to earlier case law.

Economic policy

Judicial review is not concerned with economic policy. The court does not substitute its judgment for that of the legislature or its agents, as to matters within the province of either. The court does not supplement the "feel of the expert" by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive, provided such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of the fact are reasonably based on evidence, and whether such findings are consistent with the laws of the land; *Shri Sitaram Sugar Co. Ltd* v. *Union of India*, AIR 1990 SC 1277, 1299, paragraph 86 (Judgment of Dr. Justice Thommen at page 1297, paragraph 52 and footnote 8, contains an exhaustive survey of case law as to arbitrary action. It covers several English, American and Commonwealth cases).

Bail

If, after rejection of bail by the Magistrate, High Court grants bail, Supreme Court may interfere; *Bimla* v. *State of Bihar*, 1994 1 UJ SC 326, paragraph 2.

Basic feature

Judicial review under articles 32 and 226 is a basic feature of the Constitution beyond the pale of amendability; *Kihota* v. *Zachilhu*, AIR 1993 SC 412, paragraphs 26, 85 and 107.

Certiorari

(a) Certiorari may be issued where the law under which the decision was given is void; *Himmat Lal* v. *State of Madhya Pradesh*, AIR 1954 SC 403.

(b) the decision itself violates a fundamental right (*see* below); or

(c) the decision violates the law or is without jurisdiction; *Ranjit Singh* v. *Union Territory of Chandigarh*, AIR 1991 SC 2296.

(d) the decision is against natural justice, *mala fide*, perverse or based on non-applicability of avenue.

Decisions violating fundamental rights—category (b) above, are illustrated by situations where fundamental rights violated are those created under: (i) article 14—*DTC* v. *Mazdoor Congress*, AIR 1991 SC 101; (ii) article 19(1)(g)—*Express Newspapers* v. *Union of India*, AIR 1958 SC 578, paragraphs 226; (iii) article 16—*Indra* v. *Union of India*, (1991) Supp 3 SCC 557, 559; (iv) article 21—*Sangita* v. *State of Uttar Pradesh*, (1992) Supp 1 SC 715; *State of Bihar* v. *Sharma*, AIR 1991 SC 1260; (v) article 22—*Bapna* v. *Union of India*, (1992) 3 SCC 512; *Advisory Board* v. *State of Kerala*, (1991) 2 SCC 1. Mere misapplication of law is not a ground for *certiorari*; *Union of India* v. *Deep*, (1992) 4 SCC 432.

Contempt

Wilful non-compliance with court order under article 32 is contempt of court; *Sachdev* v. *Union of India*, (1991) 1 SCC 605, paragraphs 6-8 and 11.

Instead of proceeding in contempt court may award exemplary costs; *Ajay* v. *State of Uttar Pradesh*, AIR 1991 SC 498, paragraph 4.

Death in custody

Compensation may be awarded for death in police custody; *Nilabati* v. *State of Orissa*, (1993) 2 SCC 746 (3 Judges).

Detention

In case of preventive detention, main ground of interference is breach of article 22(5); *Gracy* v. *State of Kerala*, AIR 1991 SC 1090, paragraphs 9-10.

Court may order release of a detenue if he is not given opportunity to appear before the Board within the statutory period; *State of Punjab* v. *Sukhpal Singh*, AIR 1990 SC 231.

Court may order the release of a detenue if there is failure to obtain Government approval within statutory period; *Kiran Dasha* v. *Government of Andhra Pradesh*, (1990) 1 SCC 328.

Inordinate delay in passing detention order may entail release of the detenue; *Anand Prakash* v. *State of Uttar Pradesh*, AIR 1990 SC 516.

Court cannot reduce the period of detention; *Poonam* v. *Wadhwan*, AIR 1987 SC 1303, paragraph 12.

Enforcement of Act

Court will not compel Government to enforce Constitution Amendment; *A.K. Roy* v. *Union of India*, AIR 1982 SC 710, paragraphs 52-53.

Child prostitution

Supreme Court has issued directions to check the evil of child prostitution; *Vishal Jeet* v. *Union of India*, (1990) 3 SCC 318, paragraph 16.

Pollution

Directions can be issued to control pollution; *Subhash* v. *State of Bihar*, AIR 1991 SC 420, paragraph 7.

Closure of industry

Supreme Court issued directions for revival of a company (viable units) having regard to the fact that living had been denied to 10,000 workers for five years; *Workers of M/s. Rohtas Industries Ltd.* v. *Rohtas Industries Ltd.*, AIR 1990 SC 481.

Irrigation

Where a dam under construction is apprehended to endanger safety, court can book into the matter; *Tehri Baandh* v. *State of Uttar Pradesh*, (1991) 1 UJSC 121, paragraph 13.

Law making

Court can not issue direction for making of law or subordinate legislation; *S.C. Employees Association* v. *Union of India*, (1989) 4 SCC 1967.

Liability

Court has evolved new basis of liability in public law (as distinguished from private law) where breach of fundamental right is involved; *Nilabati Behara* v. *State of Orissa*, (1993) 2 SCC 746, paragraphs 10, 11, 19 and 26 (3 judges).

In the above case Supreme Court relied *inter alia* on (a) its duty to enforce fundamental right under articles 14, 21, 32, (b) need to make the guaranteed remedies effective, (c) to do complete justice; *Union Carbide* v. *Union of India*, (1991) SCC 584.

Mandamus

(a) Mandamus should be issued under article 32 where a fundamental right is infringed by a statute.

(b) statutory order.

(c) executive order (non-statutory); *Prabodh* v. *State of Uttar Pradesh*, AIR 1985 SC 167, paragraphs 38 and 50; *Abdul Hakim* v. *State of Bihar*, (1961) SCR 610. However according to some decisions, it is discretionary; *Pramod* v. *Medical Council*, (1991) UJSC 400.

Policy

Court cannot—

(a) *enforce* implementation of a Government policy (unless fundamental right is involved); *Hindi Hitrakshak Samiti* v. *Union of India*, AIR 1990 SC 851.

(b) *interfere* in the implementation of Government policy; *English M.S.I.A.* v. *State of Karnataka*, (1994) UJSC 291, paragraph 23.

Political question

Where a fundamental right is involved the doctrine of non-justifiability of political question has no application; *Indra* v. *Union of India*, (1992) Supp (3) SCC 217, paragraphs 557-559 (9 Judges);

S.C. Advocates Association v. *Union of India*, (1993) 4 SCC 411, paragraphs 273 and 328 (9 Judges).

Prostitutes

Segregating prostitutes' children by locating separate schools and providing separate hostels, would not be in the interest of such children. Once children are born to prostitutes, it is in the interest of such children and of society at large, that the children of prostitutes should not be segregated from their mothers and be allowed to mingle with others and become part of the society; *Gaurav Jain* v. *Union of India*, AIR 1990 SC 292 (Ranganath Misra, M.N. Venkatachaliah and P.B. Sawant, JJ.).

Public interest litigation

The development of public interest litigation during the last decade has largely modified the traditional rule as to standing to litigate in constitutional matters. The following decisions may be particularly seen in this context:—

(i) *Ratlam Municipality* v. *Virdi Chand*, AIR 1980 SC 1622.

(ii) *Fertiliser Corporation of India* v. *Union of India*, AIR 1981 SC 344, paragraphs 43, 44 and 48.

(iii) *Sheela Barse* v. *Union of India*, AIR 1986 SC 1773, paragraphs 8 and 9.

(iv) *Nakara* v. *Union of India*, AIR 1983 SC 130, paragraph 64.

(v) *D.C. Wadhwa* v. *State of Bihar*, AIR 1987 SC 579, paragraph 3.

(vi) *Sachidanand* v. *State of West Bengal*, AIR 1987 SC 1109, paragraph 60.

(vii) *M.C. Mehta* v. *Union of India*, (1987) 1 SCC 395.

A public interest litigation may be transferred to the appropriate High Court; *Kasturi Lal* v. *State of Uttar Pradesh*, (1990) Supp SCC 784.

A petition in public interest litigation filed before the Supreme Court may be transferred to the appropriate High Court; *Subramaniam* v. *Union of India*, (1990) Supp SCC 775.

A letter in public interest litigation should be addressed to the court and not to an individual judge; *Sachdev* v. *Union of India*, (1991) 1 SCC 605, paragraph 1.

Doctrine of Parens patna

The Supreme Court in *Charan Lal Sahu* v. *Union of India*, AIR 1990 SC 1480, has Upheld the validity of the Bhopal Gas Disaster (Processing of Claims) Act, 1985. The judgment discusses the doctrine of *parens patna*. It also takes note of the fact that the legislation in question related to "actionable wrong" under the Seventh Schedule, Concurrent list, entry 8. It also contains a suggestion (in para 129) to lay down certain norms and standards in regard to the industries dealing with materials which are of dangerous potentialities. In the judgment of Mr. Justice Ranganathan, there is a suggestion that either the Fatal Accidents Act, 1855 should be amended or fresh legislation enacted to deal with victims of mass disaster; *Inter alia*, the suggested legislation should deal with the following matters:—

(i) Fixed minimum compensation on no fault basis, pending filing adjudication of the case.

(ii) Creation of a special forum with specific power to grant interim relief in appropriate cases.

(iii) Evaluation of a procedure to be followed by such (special) forum, which will be conducive to the determination of the claims and avoid high degree of formalism if proceedings.

(iv) A provision requiring industries and concerns engaged in hazardous activities to take out compulsory insurance against third party risk.

The court did not uphold the argument that the Act was against article 14 of the Constitution.

Stock Exchange

Increase in the number or members of the Delhi Stock Exchange is a matter of policy. Court would not issue a mandate in such matters; *Om Prakash Poplai* v. *Delhi Stock Exchange Association*, Jt (1994) 1 SC 114.

Infringment of fundamental right

Threat of infringment of fundamental right is enough to justify issue of writ; *Simranjit* v. *Union of India*, (1993) 1 UJ SC 32, paragraph 7.

Limits of writ jurisdiction

There must be a clear breach of fundamental right not involving disputed questions of fact; *Northern Corporation* v. *Union of India*, (1990) 4 SCC 239.

Non-justifiable and political matters cannot be dealt with under the guise of public interest litigation; *Maharshi* v. *State*, AIR 1990 All 52, paragraph 18.

Policy preferences not involving fundamental rights cannot be agitated under article 32 "Articles of the Constitution cannot be a means to indicate policy preference"; *Hindi Samiti* v. *Union of India*, (1990) 1 SCJ 617, paragraphs 6-7: AIR 1990 SC 851, 853, 856, paragraph 67.

Government policy cannot be enforced by writ under article 32; *Hindi Hitarakshak* v. *Union of India*, AIR 1990 SC 851.

A Directive principle cannot be enforced by writ under article 32; *B. Krishna Bhat* v. *Union of India*, (1990) 3 SCC 65.

A question that can be agitated under the Industrial Disputes Act, 1947 will not be normally allowed to be agitated under article 32; *F.C.I. Workers Union* v. *Food Corporation of India*, (1990) Supp SCC 296, paragraph 11.

Selection Committee

It is not the function of the court to hear appeals over the decisions of the Selection Committees in Universities and to scrutinize the relative merits of the candidates. The decisions of the Selection Committee can be interfered with, only on limited grounds, such as, illegality or patent material irregularity in the Constitution of the committee or its procedure vitiating the selection or proved *mala fides*, affecting the selection *etc*. Setting aside the selection on the ground of the so called comparative merits of the candidates, as assessed by the court while sitting in appeal over the selection so made, would not be permissible; *Dalpat Abasaheb Solunke* v. *Dr. B.S. Mahajan*, AIR 1990 SC 434 (Kuldip Singh, P.B. Sawant and K. Ramaswamy, JJ.).

Service matters

Where the petitioner's fundamental rights are impaired by legislation or rules, or Government orders, the court can interfere even if it is a matter concerning service; *F.C.I. Workers* v. *Food Corporation of India*, AIR 1990 SC 2178.

Similarly, the court may interfere where the fundamental rights of a public sector employee are infringed; *Bhagwati* v. *S.M.D.C.*, (1990) 1 SCJ 433, paragraph 6.

Denial of equal pay for equal work becomes irrational classification for the purposes of article 14; *Grih Kalyan Kendra Workers' Union* v. *Union of India*, (1991) 1 SCC 619, paragraph 6.

If the fundamental rights of a member of the Armed Forces are violated or if there is a jurisdictional error, judicial review is available; *S.M. Mukherjee* v. *Union of India*, AIR 1990 SC 1984.

However, if *mala fides* are alleged, there must be proper pleading; *Suresh* v. *Defence Secretary*, AIR 1991 SC 483.

Direction under article 32 would not be issued to the opposite party to regulate the services of the petitioner in the post of helper where petitioner does not approve the Commissioner set up for the purpose; *A. Hansavani* v. *State of Tamil Nadu*, JT (1994) 4 SC 651.

For violation of fundamental right (this includes observance of natural justice) in service matters writ is available under article 32. This is illustrated by violation of article from—

(a) unconstitutional statute—*Nityananda* v. *State of Orissa*, AIR 1991 SC 1134, paragraph 13.

(b) Rule or order—*F.C.I. Workers Union* v. *Food Corporation of India*, AIR 1990 SC 2178, paragraphs 18-20.

(c) arbitrary, perverse or *mala fide* decision; *Duvala* v. *Chief Secretary*, AIR 1984 SC 1527; *Khanzode* v. *R.B.I.*, AIR 1982 SC 917. (Public Sector Corporation).

A candidate who has been illegally denied selection can approach, the court for quashing the selection and issuing directions for selection, but court cannot evaluator the fitness; *I.A.C.* v. *Shukla*, (1993) 23 ATC 407 (SC), paragraph 9.

Counter-affidavits (detention)

Counter affidavits filed as in reply to allegations of (i) *mala fide*, (ii) abuse of power, or (iii) bias, should be filed by the detaining authority himself; *Gazi Khan* v. *State of Rajasthan*, AIR 1990 SC 1364, 1367, paragraphs 9-14.

Commissioner

Court may appoint a person to act as Commissioner to inquire into allegations made against Government officers for breach of fundamental right. A request made after an objective inquiry would not be rejected unless good reasons are shown to exist for rejection; *Delhi Judicial Service Association* v. *State of Gujarat*, (1991) 4 SCC 406.

Compensation

For deprivation of right to life and personal liberty, compensation may be awarded; *Saheli* v. *C.P.*, (1990) 1 SCJ 300, paragraphs 11-14.

Damages

For breach of *public law* duty the court may award against the wrong doer exemplary damages, *Nilabati* v. *State of Orissa*, (1993) 2 SCC 746, paragraphs 11, 20, 32, 34, 35 and 36.

Estoppel against petitioner

Petitioner who has voluntarily accepted benefit under a statute cannot object to its validity; *Pramod* v. *Medical Council*, AIR (1991) 1 UJSC 400

Estoppel against State

Where a State party supports a petition on the merits, it cannot be allowed to raise a technical plea after a long lapse of time; *T.N. Sangam* v. *Union of India*, AIR 1990 SC 1317, paragraph 6.

False plea

A petition may be dismissed at any stage (even after *rule nisi* is issued) if petitioner has made a false plea; A.*I.S.B.O.F.* v. *Union of India*, (1990) Supp SCC 336, paragraphs 12-13.

Laches

Laches or unreasonable delay in instituting writ petition may bar the remedy; *Tilok Chand* v. *Munshi*, AIR 1970 SC 898; *Ramchandra* v. *State*, AIR 1974 SC 259, 265.

Unexplained delay may entail refusal to issue a writ *Bhaskar* v. *State of Andhra Pradesh*, (1993) 24 ATC 842.

But delay is no bar to *quo warranto*; *Kashinath* v. *Speaker*, (1993) 2 SCC 703, paragraphs 34-36.

Recently refusal for delay has been described as a rule of practice; *D.R.L.R.C.* v. *Dt. Board*, (1992) 2 SCC 598.

Locus standi

Locus standi to file a particular petition under article 32 depends on the facts as they existed at the time when the petition was filed; *Ruqmani* v. *Achuthan*, AIR 1991 SC 983.

A journalist may move a writ petition, if the case falls within the recognised category of cases for public interest litigation; *Bhola Nath* v. *State of Uttar Pradesh*, (1990) Supp SCC 151, paragraph 1.

If personal litigation is wrongly fought, in the shape of public interest litigation, cost may be imposed on the person instituting such litigation; *Chhetriya Pradushan* v. *State of Uttar Pradesh*, AIR 1990 SC 2060.

The classes of persons for whom public interest litigation may be fought, are dealt with in a judgment of the Supreme Court; *Subhash* v. *State of Bihar*, AIR 1991 SC 420, paragraphs 7 and 8.

Pleading

Court will not give relief if the pleadings are not specific; *Arti* v. *State of Jammu & Kashmir*, AIR 1981 SC 1009; *Sharma* v. *Union of India*, AIR 1981 SC 588.

Relief

There is no theoretical limit to the relief to be granted. Court gave direction for insurance of workers in match factories; *Mehta* v. *State of Tamil Nadu*, AIR 1991 SC 417.

Where two persons were detained by the Punjab police and political rivalry was alleged, the Supreme Court directed the District Judge, Ludhiana to conduct an inquiry; *Tirathi Ram Laini* v. *State of Punjab*, JT (1994) 1 SC 420.

Relief given up in the High Court may be disallowed under article 32; *Bhattacharya* v. *Union of India*, AIR 1991 SC 468, paragraph 6.

Court may refuse relief to a person who has voluntarily accepted benefit under a challenged statute and files the challenge after considerable lapse of time; *Pramod* v. *Medical Council*, (1991) 1 UJSC 400.

Even where the court does not grant relief as prayed for on the merits, it may give orders to do justice to petitioner who might otherwise suffer by reason of delay in granting interim relief; *Prem* v. *Union of India*, (1991) USJC 690 paragraph 19.

Res judicata

Res judicata applies in writ petitions generally (though not in public interest litigation); *Grih Kalyan Kendra Workers' Union* v. *Union of India*, (1991) SCC 619, paragraph 11; *Rural Litigation and Entitlement Kendra* v. *State of Uttar Pradesh*, AIR 1989 SC 594.

Writ petition (otherwise than through review) cannot be filed to seek setting aside of earlier findings of facts; *Grih Kalyan Kendra Workers' Union* v. *Union of India*, (1991) 1 UJSC 468, paragraph 10.

Judgment under article 136 bars petition under article 32; *Bhasker* v. *State of Andhra Pradesh*, (1993) 3 SCC 307.

In *ex parte* judgment writ petition would be *res judicata* if dismissal is on merits by a speaking order; *The Direct Recruit Class-II Engineering Officers' Association* v. *State of Maharashtra*, AIR 1990 SC 1607. Decisions are not uniform as to whether constructive *res judicata* applies in writs. As per the decision in *K.N. Oil Industries* v. *State of Madhya Pradesh*, AIR 1986 SC 1929, Constructive *res judicata* applies. After the decision in *Federation of Directly Appointed Officers of Indian Railways* v. *Union of India*, AIR 1993 SC 2422: (1993) 3 SCC 346, it does not apply.

There is no *res judicata* under article 32 *if earlier petition under 226 is withdrawn; The Direct Recruit Class-II Engineering Officers' Association* v. *State of Maharashtra*, AIR 1990 SC 1607.

Writ petition by workers in winding up proceedings

The Supreme Court had entertained a writ petition with the object of rival of an undertaking and rehabilitation of workers. In spite of the best efforts, revival was not feasible. The court then directed resumption of winding up proceedings; *Workers of M/s. Rohtas Industries* v. *Rohtas Industries*, AIR 1996 SC 467 (paragraphs 15,17, 19).

Liability of officers

It is now well-settled, that the bureaucracy is also accountable for the acts done illegally, when the court exercises judicial review; *State of Bihar* v. *Subhash Singh*, AIR 1997 SC 1390, paragraph 3.

Legislation on personal law

Writ petition is not maintainable to challenge legislation on personal law, where policy matters are involved; *Ahmedabad Women Action Groups* v. *Union of India*, (1997) 3 SCC 573.

Introduction of Bill in the legislature

Writ-petition cannot be filed to seek introduction of Bill for Rajasthani language being included in the Eighth Schedule; *Kanhaiya Lal Sethia* v. *Union of India*, AIR 1998 SC 865.

Composite petition

Election petition and writ petition cannot be combined; *Dharti Pakar* v. *K.R. Narayanan*, (1997) 8 SCC 766.

Earlier decision

Writ petition cannot be filed to circumvent an earlier decision of the Supreme Court; *Gopi Aqua Farma* v. *Union of India*, AIR 1997 SC 3519.

Continuing mandamus

Where the mere issue of (one-time) mandamus would be futile against a public agency guilty of continuous inertia then 'continuing' mandamus' can be issued; *Vineet Narain* v. *Union of India*, AIR 1998 SC 889.

[1][**32A. Constitutional validity of State laws not to be considered in proceedings under article 32.**—[*Rep. by the Constitution (Forty-third Amendment) Act, 1977, sec. 3 (w.e.f. 13-4-1978).*]]

[2][**33. Power of Parliament to modify the rights conferred by this Part in their**

1. Ins. by the Constitution (Forty-fourth Amendment), Act, 1976, sec. 6 (w.e.f. 1-2-1977).
2. Subs. by the Constitution (Fiftieth Amendment) Act, 1984, sec. 2, for article 33 (w.e.f 11-9-1984).

application to Forces, *etc*.—Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.]

Notes on Article 33

Scope

Article 33 (which was extensively amended in 1984) enables Parliament to modify fundamental rights in relation to military and para-military forces, police forces and analogous forces. The reaction can be only by law. The undermentioned decisions illustrate the wide scope of this article:

(i) *Achudan* v. *Union of India*, (1976) 1 SCWR 80 (Right of association).

(ii) *Ram Sarup* v. *Union of India*, AIR 1965 SC 247 (General scope).

(iii) *Delhi Police Sangh* v. *Union of India*, (1987) 2 ATC 194: 1987 SC 379: (1987) 1 SC 115, 122, 124 (De-recognition of Employees Union).

The decision in *Delhi Police Sangh* v. *Union of India*, AIR 1987 SC 379, is concerned with the Police Forces (Restriction of Rights) Act, 1966 and rules framed thereunder. The rules cannot be challenged on the ground of violation of article 19(1)(c), because of article 33.

Effect

The article empowers Parliament to restrict or abrogate the application of fundamental rights in relation to armed forces, para military forces, the police *etc.*; *Achudan* v. *Union of India*, (1979) 1 SCWR 80; *Gopal* v. *Union of India*, AIR 198[illegible] SC 413.

The article does not, itself, abrogate any rights; *Chatterji* v. *Sub Area Commandant*, AIR 1951 Mad 77. Its operation is dependent on Parliamentary legislation. Of course, such legislation need not refer to article 33 in so many words; *Ram Sarup* v. *Union of India*, AIR 1965 SC 247, 251. A law passed by virtue of article 33 can override articles 21 and 22; *Prithi* v. *Union of India*, AIR 1982 SC 1413, paragraphs 13-18. Parliament may empower Government to impose restrictions: *Viswan* v. *Union of India*, AIR 1983 SC 658, paragraphs 7, 9 and 10.

Parliamentary legislation and fundamental rights

Such legislation may restrict the operation of any fundamental right, such as,—

(a) equality; *Jesuratnam* v. *Chief of Air Staff*, (1976) Cri LJ 65.

(b) freedom of expression; *Lt. Col. Prithi Pal Singh Bedi* v. *Union of India*, AIR 1982 SC 1413.

(c) freedom of association; *Achudan* v. *Union of India*, (1976) 1 SCWR 80.

(d) personal liberty; *Lt. Col. Prithi Pal Singh Bedi* v. *Union of India*, AIR 1982 SC 1413.

Writs against courts martial

Articles 136(2) and 227(4) exclude the appellate jurisdiction of the Supreme Court and the supervisory jurisdiction of the High Court in relation to court martial. But they do not exclude the

operation of articles 32 and 226. Hence, unless the substantive fundamental right itself has been excluded by a law made under article 33, the right services and consequentially the remedy of writ also survives. Hence the general principles for grant of relief in writ and grounds for interference, as generally applicable to quasi-judicial proceedings, apply in relation to courts martial also. Accordingly, case law furnishes illustrations of judicial review of proceedings of courts martial on the basis of—

(i) bias; *Ranjit* v. *Union of India*, AIR 1988 SC 2386;

(ii) other breaches of natural justice; *Laxmi* v. *Union of India*, (1991) 2 SCJ 86.

(iii) error of jurisdiction or error of law apparent on the face of the record; *Mukherjee* v. *Union of India*, (1990) 3 SCJ 93; *Ranvir* v. *Union of India*, (1991) Cri LJ 1791 (Bom).

The Supreme Court may interfere if the sentence imposed by the courts martial is disproportionate to the crime; *Ranjit* v. *Union of India*, AIR 1987 SC 2386.

Supreme Court will not enter into—

(a) questions of fact which are disputed; *Sodhi* v. *Union of India*, AIR 1991 SC 1617;

(b) irregularities not causing injustice; *Bhagat* v. *State of Himachal Pradesh*, AIR 1983 SC 454, 460.

Police Forces (Restriction of Rights Act)

Validity of the Police Forces (Restriction of Rights) Act, 1966 has been upheld, as a valid exercise of Parliament's power under that part of article 33 which applies to armed forces; *Delhi Police Sangh* v. *Union of India*, AIR 1987 SC 379.

34. Restriction on rights conferred by this Part while martial law is in force in any area.—Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

Notes on Article 34

Article 34 is primarily concerned with granting indemnity by law in respect of acts done during operation of martial law. The Constitution does not have a provision authorising proclamation of martial law. Declaration of martial law does not *ipso facto* result in suspension of the writ of *habeas corpus*; *A.D.M. Jabalpur* v. *Shukla*, AIR 1976 SC 1207, paragraph 535.

35. Legislation to give effect to the provisions of this Part.—Notwithstanding anything in this Constitution,—

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—

(i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offences under this Part;

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation.—In this article, the expression "law in force" has the same meaning as in article 372.

Notes on Article 35

The significance of article 35 is positive as well as negative. From the positive aspect, it gives power to Parliament to legislate for the enumerated matters—which legislation can contain penal provisions. Negatively, it extends the competence of State legislatures to make a law on the enumerated matters, even though some of those matters may fall within the State List.

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

36. Definition.—In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III.

37. Application of the principles contained in this Part.—The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Notes on Article 37

Scope and object: The negative aspect

The object of Directive Principles is to embody the concept of a welfare State; *Keshavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225, paragraphs 134, 139, 174. However, the Directives do not confer any enforceable rights and their alleged breach does not invalidate a law, not does it entitle a citizen to complain of its violation by the State so as to seek mandatory relief against the State. Similarly, if a legislative power does not exist in a particular legislature, then the legislature cannot seek to rely on a Directive Principle for claiming that power. Undermentioned decisions support the above propositions:

(i) *Kerala Education Bill, In re*, AIR 1958 SC 956.

(ii) *Deep Chand* v. *State of Uttar Pradesh*, AIR 1959 SC 648.

(iii) *State of Madras* v. *Champakam Dorairajan*, AIR 1951 SC 525.

(iv) *Fram Naserwanji* v. *State of Bombay*, AIR 1951 Bom 216.

(v) *U.P.S.E. Board* v. *Hari*, AIR 1979 SC 65, paragraph 4A.

Effect: The positive aspect

At the same time, the Directive Principles have, according to later decisions of the Supreme Court, a positive aspect. Thus, the Directives have been held to supplement fundamental rights in achieving a Welfare State. Parliament can amend fundamental rights for implementing the Directives, so long as the amendment does not touch the basic features. Legislation enacted to implement the Directive Principles should be upheld, as far as possible. In fact, when necessary, even constitutional provisions as to fundamental rights should be adjusted in their ambit so as to

give effect to the Directive Principles. Even legislative entries may (within the limits of the total federal scheme) be given a wide interpretation for effecting Directive Principles. Constitutional provisions (apart from fundamental rights) may be construed in the light of Directive Principles. Undermentioned decisions illustrative the above propositions:

(i) *Chandra Bhavan* v. *State of Mysore*, AIR 1970 SC 2042, paragraph 13.
(ii) *State of Kerala* v. *Thomas*, AIR 1976 SC 496.
(iii) *Lingappa* v. *State of Maharashtra*, AIR 1985 SC 389.
(iv) *Manchegowda* v. *State of Karnataka*, AIR 1984 SC 1151.
(v) *Chief Justice* v. *Dikshitulu*, (1979) 2 SCC 34.
(vi) *Jalan Trading Co.* v. *Aney*, AIR 1985 SC 233.
(vii) *Mukesh* v. *State of Madhya Pradesh*, AIR 1985 SC 537.
(viii) *Laxmi Kant* v. *Union of India*, AIR 1987 SC 232.
(ix) *A.B.K. Singh* v. *Union of India*, AIR 1981 SC 298, 335.

Harmony

Directive principles and fundamental rights are to be harmoniously construed; *Grih Kalyan Kendra Workers' Union* v. *Union of India*, (1991) 1 SCC 611, paragraph 6; *Literate Association* v. *State of Karnataka*, (1990) 2 SCC 396.

Directive Principles and UN Convention

The directive principles have been described as forerunners of the U.N. Convention on Right to Development as an inalienable human right; *Air India Statutory Corporation* v. *United Labour Union*, AIR 1997 SC 645 paragraph 38 (observations that they stand elevated to human rights).

38. State to secure a social order for the promotion of welfare of the people.—[1][(1)] The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

[2][(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]

39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;
(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
(d) that there is equal pay for equal work for both men and women;
(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

---

1. Article 38 renumbered as clause (1) thereof by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 9 (w.e.f. 20-6-1979).
2. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 9 (w.e.f. 20-6-1979).

[1][(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]

Notes on Article 39

Object

This article has been described as having the object of securing a Welfare State and may be utilised for construing provisions as to fundamentals rights. *See* the undermentioned decisions:

(i) *Srinivasa* v. *State of Karnataka*, AIR 1987 SC 1518.

(ii) *Keshavananda Bharati* v. *State of Kerala*, (1973) 4 SC 228.

(iii) *State of Tamil Nadu* v. *Abu*, AIR 1984 SC 326.

(iv) *Sanjeev Coke* v. *Bharat Cooking Coal*, AIR 1983 SC 239.

Declaration in law

An express legislative declaration in the law itself that the law was enacted for giving effect to the principles of State Policy in article 39(b) and 39(c), is not a condition precedent to the attraction of the protection under article 31C to the impugned law. The nexus between the law and the objects of article 39(b) could be shown independently of any such declaration by the legislature. The absence of evidence of nexus in the form of an express declaration, is not, by itself, evidence of the absence of such nexus; *Maharashtra State Electricity Board* v. *Thana Electricity Supply Co.*, AIR 1990 SC 153 (R.S. Pathak, CJ., Sabyasachi Mukherji, S. Natrajan and S. Ranganathan, JJ.).

Prices

A statutory corporation (even if it is not a public utility) must comply with article 39 and charge only fair prices; *ONGC* v. *Association*, AIR 1990 SC 1851, paragraphs 15 and 30.

Equal pay

Denial of equal pay for equal work becomes irrational classification within article 14; *Grih Kalayan Kendra Workers' Union* v. *Union of India*, (1991) 1 SCC 619 paragraph 6.

Difference in duties justifies difference in pay; *Hundraj* v. *Union of India*, AIR 1990 SC 1106, paragraph 44.

Differences in duties justifies discrimination in pay; *Vasudevan* v. *Union of India*, AIR 1990 SC 2295, paragraphs 18-19.

Writ can be to enforce the principle of equal work if article 14 is infringed; *F.C.I. Union* v. *Food Corporation of India*, AIR 1990 SC 2178, paragraph 20; *See* undermentioned cases as to equal pay:

(i) *Randhir* v. *Union of India*, AIR 1982 SC 879.

(ii) *Ramchandra* v. *Union of India*, AIR 1984 SC 541, paragraph 17.

Also see *Dharwad District P.W.D. Literate Daily Wage Employees Association* v. *State of Karnataka*, (1990) 2 SCC 396.

Child labour: Employment of parent

Provisions of articles 39(e), 39(f), 41 and 47 can be pressed into service to make suitable provisions regarding child labour.

---

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 7, for clause (f) (w.e.f. 3-1-1977).

Accordingly, the Supreme Court has issued directions to the State to see that an adult member of the family whose child is in employment in a factory, mine or hazardous employment gets employment anywhere, in lieu of the child; *M.C. Mehta* v. *State of Tamil Nadu*, AIR 1997 SC 699, paragraphs 29, 30, 31.

Equal pay for equal work

Whether a particular work is same or similar in nature to another work, can be determined on three considerations:

(i) The Authority should take a broad view;

(ii) In ascertaining whether any differences are of practical importance, the authority should take an equally broad approach, for the very concept of similar work implies differences in detail. These small deference however, should not defeat a claim of equality on trivial grounds;'

(iii) One should look at the duties actually performed, and not at those theoretically possible.

In making a comparison the Authority should look at the duties generally performed by men and women. Both men and women work at inconvenient times, there is no requirement that all those who work, *e.g.*, at night, shall be paid the same basic rate as those who work normal day shifts. Thus, a woman who works in day cannot claim equality with a man at a higher basic rate for working nights if, in fact there are women working nights at that rate too, and the applicant herself would be entitled to that rate if she changed the shifts; *Mackinnon Mackenzie & Co. Ltd.* v. *Audrey D. Costa*, AIR 1987 SC 1281.

See the undermentioned cases:

(i) *Union of India* v. *Tejram P. Bombhate*, AIR 1992 SC 570, paragraphs 4-5.

(ii) *State of Tamil Nadu* v. *M.R. Alaga Apan*, AIR 1997 SC 2006, paragraph 13.

(iii) *State of Haryana* v. *Surinder Kumar*, AIR 1997 SC 2129, paragraph 5.

(iv) *Garhwal Jal Sansthan* v. *State of Uttar Pradesh*, AIR 1997 SC 2143, paragraph 10.

[1][**39A. Equal justice and free legal aid.**—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.]

Notes on Article 39A

Legal aid

An important impact of article 39A read with article 21 has been to reinforce the right of a person involved in a criminal proceeding to legal aid. The article has been thus used to interpret (and even expand) the right conferred by section 304 of the Code of Criminal Procedure, 1973; *See* the undermentioned cases:

(i) *Hussainara* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1369.

(ii) *Hoskot* v. *State of Maharashtra*, AIR 1978 SC 1548.

(iii) *State of Haryana* v. *Darshana*, AIR 1979 SC 885.

(iv) *Khatri* v. *State of Bihar*, AIR 1981 SC 928.

(v) *Sukh Das* v. *Union of Territory*, AIR 1986 SC 991.

Legal aid may be treated as a part of the right created under article 21; *Kishore* v. *State of Himachal Pradesh*, (1991) 1 SCC 286.

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 8 (w.e.f. 3-1-1977).

In a suitable case, Supreme Court may direct District Judge to arrange legal aid; *Bajiban Chauhan* v. *U.P.S.R.T.C.*, (1990) Supp SC 769.

40. Organisation of village panchayats.—The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government.

41. Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Notes on Article 41

Court should so interpret an Act as to advance article 41; *Jacab* v. *Kerala Water Authority*, (1991) 1 SCC 28.

42. Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief.

43. Living wage, *etc.*, for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

[1][**43A. Participation of workers in management of industries.**—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.]

44. Uniform civil code for the citizens.—The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Notes on Article 44

Uniform law for all persons may be desirable. But its enactment in one go may be counter-productive to the unity of the nation; *Pannalal Bansilal Patil* v. *State of Andhra Pradesh*, AIR 1996 SC 1023 paragraph 12.

Personal law

The Supreme Court of India has, in a large number of cases, rejected attempts (through public interest litigation) to seek the issue of writs:—

(a) praying for the introduction of uniform civil code: or

(b) declaring certain enactments relating to family law (alleged to be discriminatory) as unconstitutional.

Certain petitioners prayed as under:

(a) to declare Muslim Personal Law which allows polygamy as void, as offending articles 14 and 15 of the Constitution;

(b) to declare Muslim Personal Law which enables a Muslim male to give a unilateral Talaq to his wife without her consent and without resort to judicial process of courts, as void, offending articles 13, 14 and 15 of the Constitution;

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 9 (w.e.f. 3-1-1977).

(c) to declare that the mere fact that a muslim husband takes more than one wife is an act of cruelty within the meaning of sub-section (8) of section 2 of the Dissolution of Muslim Marriages Act, 1939.

In another writ petition, the reliefs prayed for were the following:—

(a) to declare sections 2(2), 5(ii) and (iii), 6 and *Explanation* to section 30 of the Hindu Succession Act, 1956, as void, as offending articles 14 and 15 read with article 13 of the Constitution of India;

(b) to declare section 2 of as the Hindu Marriage Act, 1955, as void, offending articles 14 and 15 of the Constitution of India.

The court stated at the very outset that the petitions mentioned above did not deserve disposal on the merits, as the issues involved were matters of policy with which the Supreme Court would not ordinarily have concern. (The court cited numerous earlier cases, adopting the same approach).

Further, the issue regarding Muslim Women *etc*. Act was already pending before another Bench. The above judgment shows that the court is somewhat reluctant to interfere in matters of personal law. There have been other decisions exhibiting the same approach; *Ahmedabad Women Action Group* v. *Union of India*, (1997) 3 SCC 573.

Uniform Code

In *Maharshi Avadhesh* v. *Union of India*, (1994) 1 Supp SCC 713, the Supreme Court dismissed a petition seeking a writ of mandamus against the Government of India to introduce a common civil code. The court took the view that it was a matter for the legislature. "The court cannot legislate in these matters".

In the same petition, the Supreme Court declined to grant a declaration nullifying the Muslim Women's Protection of Rights on Divorce Act, 1986.

The court also dismissed the prayer to direct the Government, not to enact a Shariat Act so as to affect the rights of Muslim women; *Maharshi Advadhesh* v. *Union of India*, (1994) Supp 1 SCC 713.

In *Reynold Rajamani* v. *Union of India*, AIR 1982 SC 1261, 1263, 1264, the court rejected a prayer to remove the discrimination between men and women under section 10 of the Indian Divorce Act, 1869 (applicable to Christians). the court based its approach on the "limits" of the courts, jurisdiction. It held that when a legislative provision enumerates the grounds of divorce, those grounds limit the courts' jurisdiction and the court cannot re-write the law, so as to add grounds of divorce not permissible under the section.

Religious trusts

In *Pannalal Bansilal* v. *State of Andhra Pradesh*, AIR 1996 SCW 507, 515: (1996) 2 SCC 498 the Supreme Court (with reference to the A.P. Hindu Religious and Charitable Endowments Act, 1987) rejected the challenge based on the argument, that the law should apply to persons professing all religions.

The court made these observations—

> In a pluralist society like India, in which people have faith in their respective religious beliefs or tenets propounded by different religions or their offshoots, the founding fathers, while making the Constitution, were confronted with problems to unify and integrate people of India professing different religious faiths, born in different castes, creeds or sub-sections in the society, speaking different languages and dialects in different regions and provided a secular Constitution to integrate all sections of the society as a united Bharat. The directive principles of the Constitution themselves visualise diversity and attempt to foster uniformity among people of different faiths. A uniform law, though it is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In

a democracy governed by the rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief of defect which is most acute can be remedied by process of law at stages.

45. Provision for free and compulsory education for children.—The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Notes on Article 46

A law prohibiting transfer of land belonging to a member of a Scheduled Tribes to a non-tribals is valid; *Lingappa* v. *State of Maharashtra*, AIR 1985 SC 389.

Regarding the expression "weaker sections of the Society", the Supreme Court has directed the Central Government to lay down appropriate guidelines; *Shantistar Builders* v. *Narayan Khimalal Totame*, AIR 1990 SC 630, paragraphs 12-13.

An employee belonging to backward classes has a fundamental right to be considered for promotion on the basis of article 16 read with article 46. *M*, an employee in the backward class category, was granted promotion when he approached the High Court. It was held that promotion could not be denied to another employee, who was similarly placed; *Vishwas Anna Sawant* v. *Municipal Corporation of Greater Bombay*, JT 1994 (3) SC 573.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48. Organisation of agriculture and animal husbandry.—The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle.

[1][**48A. Protection and improvement of environment and safeguarding of forests and wild life.**—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.]

Notes on Article 48A

Articles 14, 21 and 51A(g) are to be read together; *Subhash* v. *State of Bihar*, AIR 1991 SC 420.

Through public interest litigation brought by an institution in the locality on the basis of article 21, the duty under article 48A can be enforced; *Satish* v. *State of Uttar Pradesh*, (1992) Supp (2) SCC 94, paragraph 1; *Tarun* v. *Union of India*, (1992) Supp 2 SCC 448, paragraph 12.

Duty under article 48A can be enforced through a letter, based on article 21; *Mehta* v. *Union of India*, (1992) Supp 2 SCC 85, 633, 637.

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 10 (w.e.f. 3-1-1977).

49. Protection of monuments and places and objects of national importance.—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, [1][declared by or under law made by Parliament] to be of national importance, from spoilation, disfigurement, destruction, removal, disposal or export, as the case may be.

50. Separation of judiciary from executive.—The State shall take steps to separate the judiciary from the executive in the public services of the State.

51. Promotion of international peace and security.—The State shall endeavour to—

(a) promote international peace and security;

(b) maintain just and honourable relations between nations;

(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and

(d) encourage settlement of international disputes by arbitration.

Notes on Article 51

International law and national law (municipal law)

The following propositions should be noted:—

(a) International treaties do not automatically become part of national law. They have to be incorporated into the legal system by appropriate law.

(b) However, national courts generally interpret statutes so as to maintain harmony with rules of international law.

(c) National legislation, even if contrary of international law, has to be respected.

(d) Power to implement treaties belongs exclusively to the Union under article 253.

Following cases support the above propositions:—

(i) *Moti Lal* v. *State of Uttar Pradesh*, AIR 1951 All 257 (FB).

(ii) *Berubari Union, In re*, AIR 1960 SC 845.

(iii) *Ali Akbar* v. *United Arab Republic*, AIR 1966 SC 230.

(iv) *Maganbhai* v. *Union of India*, AIR 1969 SC 783.

(v) *Varghese* v. *Bank of Cochin*, AIR 1980 SC 470.

(vi) *Civil Rights Committee* v. *Union of India*, AIR 1983 Kant 85.

(vii) *Gramophone Co.* v. *Birendra*, AIR 1984 SC 667.

Extradition

Extradition treaty is a contract—

(i) *Arton No. 2, In re*, (1896) 1 QB 509.

(ii) *R.* v. *Governor of Ashford Remand Centre*, (1973) Current Law Year Book 1434.

(iii) *Government of the Federal Republic of Germany* v. *Sotiaridis*, (1974) ClY 1665.

(iv) *R.* v. *Governor of Ashford Remand Centre*, The Times, July 14, 1987, Current Law (August, 1987).

---

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 27, for "declared by Parliament by law".

[1][*PART IVA*

FUNDAMENTAL DUTIES

51A. Fundamental duties.—It shall be the duty of every citizen of India—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

Notes on Article 51A

Scope

Article 51A is confined to "citizens" unlike some of the articles relating to fundamental rights (*e.g.* article 21) which extend to all "persons".

Fundamental duties and their enforcement

Provisions as to fundamental duties cannot be enforced by writs. They can be promoted only by constitutional methods. But they can be used for interpreting ambiguous statutes. *See* undermentioned cases:

(i) *Mumbai Kamgar Sabha* v. *Abdulbhai*, AIR 1976 SC 1455.

(ii) *Surya* v. *Union of India*, AIR 1982 Raj 1.

(iii) *Head Masters* v. *Union of India*, AIR 1983 Cal 448.

(iv) *Dasarathi* v. *State*, AIR 1985 AP 136.

Where the constitutionality of an Act is challenged the court may look at article 51A to uphold it; *Mohan* v. *Union of India*, (1992) Suppl 1 SCC 594, paragraphs 41 and 42.

Use and interpretation

The courts may look at the fundamental duties while interpreting equivocal statutes which admit of two constructions. On the principle that as the duties are obligatory on citizens, the State should also observe them, the Supreme Court has, with reference to article 51A(g), issued oral orders stopping quarrying operations at certain places in UP. Similarly, it has issued directions regarding

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 11 (w.e.f. 3-1-1977).

declaring disputed areas as 'reserved forests' under section 20 of the Indian Forest Act, 1927; *See* the undermentioned cases:

(i) *Mumbai Kamgar Sabha* v. *Abdulbhai*, AIR 1976 SC 1455, paragraph 29.

(ii) *Rural Litigation and Entitlement Kendra* v. *State of Uttar Pradesh*, AIR 1987 SC 2426: (1987) Supp SCC 487 (Quarrying).

(iii) *Banwasi Seva Ashram* v. *State of Uttar Pradesh*, (1986) 4 SCC 753: (1987) 3 SCC 304: AIR 1987 SC 374 (Forests).

Striving towards excellence

In a case in which the High Court of Allahabad quashed a notification issued under the Land Acquisition Act as *mala fide*, the High Court discussed the significance of article 51A(g) and pointed out that a new chapter had been inserted in the Constitution to regulate behaviour and to bring about excellence. Article 51A is in a positive form with a view to striving towards excellence. People should not conduct themselves in a blameworthy manner. 'Excellence' means surpassing merit, virtue, honest performance. Constitutional law givers have provided that the citizens of this great nation shall perform their duties in an excellent way rather than perform them half heartedly; The performance of these duties falls within Constitutional law; *Ram Prasad* v. *State of Uttar Pradesh*, AIR 1988 All 309 (DB).

Environment

Fundamental duties have been particularly invoked in litigation concerning the environment. *See* the undermentioned cases:

(i) *Rural Litigation and Entitlement Kendra* v. *State of Uttar Pradesh*, AIR 1987 SC 359.

(ii) *Sachidanand* v. *State of West Bengal*, AIR 1987 SC 1109.

PART V
THE UNION

CHAPTER I - THE EXECUTIVE
The President and Vice-President

52. The President of India.—There shall be a President of India.

53. Executive power of the Union.—(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall—

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) prevent Parliament from conferring by law functions on authorities other than the President.

Notes on Article 53

Executive power

The following propositions are worth noting:—

(a) Executive power must be exercised in accordance with the Constitution—including, in particular, the provisions of article 14.

(i) *Rao* v. *Union of India*, AIR 1971 SC 1002.

(ii) *Sanjeevi* v. *State of Madras*, AIR 1970 SC 1102.

(b) Executive power (so long as it does not violate the Constitution or the law) may be exercised without prior legislative support.

(i) *Maganabhai* v. *Union of India*, AIR 1969 SC 783.

(ii) *Ram Jawaya* v. *State of Punjab*, (1955) 2 SC 235.

(c) Executive power is the residue of functions of Government, which are not legislative or judicial; *Madhav Rao* v. *Union of India*, AIR 1971 SC 530, paragraphs 94, 96.

54. Election of President.—The President shall be elected by the members of an electoral college consisting of—

(a) the elected members of both Houses of Parliament; and

(b) the elected members of the Legislative Assemblies of the States.

[1][*Explanation.*—In this article and in article 55, "State" includes the National Capital Territory of Delhi and the Union Territory of Pondicherry.]

55. Manner of election of President.—(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity among the States *inter se* as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:—

(a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;

(b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;

(c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

---

1. Ins. by the Constitution (Seventieth Amendment) Act, 1992 (w.e.f. 1-6-1995).

[1][*Explanation.*—In this article, the expression "population" means the population ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.]

56. Term of office of President.—(1) The President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(a) the President may, by writing under his hand addressed to the Vice-President, resign his office;

(b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61:

(c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

57. Eligibility for re-election.—A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

58. Qualifications for election as President.—(1) No person shall be eligible for election as President unless he—

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor [2][***] of any State or is a Minister either for the Union or for any State.

59. Conditions of President's office.—(1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

---

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 12, for the *Explanation* (w.e.f. 3-1-1977).
2. The words "or Rajpramukh or Uparajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

60. Oath or affirmation by the President.—Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior most Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say—

"I, A.B., do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will faithfully execute the office of President (or discharge the functions of the President) of India and will do the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

61. Procedure for impeachment of the President.—(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or cause to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy.—(1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

63. The Vice-President of India.—There shall be a Vice-President of India.

64. The Vice-President to be *ex officio* Chairman of the Council of States.—The Vice-President shall be *ex officio* Chairman of the Council of States and shall not hold any other office of profit:

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

65. The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President.—(1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President, have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

66. Election of Vice-President.—(1) The Vice-President shall be elected by the [1][members of an electoral college consisting of the members of both Houses of Parliament] in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he—

(a) is a citizen of India;

(b) has completed the age of thirty-five years;

(c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor [2][***] of any State or is a Minister either for the Union or for any State.

---

1. Subs. by the Constitution (Eleventh Amendment) Act, 1961, sec. 2, for "members of both Houses of Parliament assembled at a joint meeting"
2. The words "or Rajpramukh or uparajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

67. Term of office of Vice-President.—The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(a) a Vice-President may, by writing under his hand addressed to the President, resign his office;

(b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

68. Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.—(1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

69. Oath or affirmation by the Vice-President.—Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say

"I, A.B., do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will bear true faith, and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

70. Discharge of President's functions in other contingencies.—Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

[1][**71. Matters relating to, or connected with, the election of a President or Vice-President.**—(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

---

1. Art. 71 has been successively subs. by the Constitution (Thirty-ninth Amendment) Act, 1975, sec. 2 (w.e.f. 10-8-1975) and the Constitution (Forty-fourth Amendment) Act, 1978, sec. 10, to read as above (w.e.f. 20-6-1979).

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

72. Power of President to grant pardons, *etc.*, and to suspend, remit or commute sentences in certain cases.—(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Noting in sub-clause (a) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor [1][***] of a State under any law for the time being in force.

Notes on Article 72

The effect of a series of decisions of the Supreme Court (and of some High Courts) is as under:—

(a) The exercise of the power by the president under article 72 is primarily a matter for his discretion and the courts would not interfere with his actual decision on the merits.

(b) But courts exercise a very limited power of judicial review, to ensure that the President considers all relevant materials before coming to his decision.

(c) The President can, in the exercise of this power, examine the evidence afresh. In doing so, he is not sitting as a court of appeal. His power is independent of the judiciary. He can, therefore, afford relief not only from a sentence which he regards as unduly harsh., but also from an evident mistake.

(d) The President is not bound to hear a petitioner for mercy before he rejects the petition.

The undermentioned decisions support the above propositions:

(i) *Nanavati* v. *State of Bombay*, AIR 1961 SC 122.

(ii) *Ramanajah* v. *Supdt., Central Jail*, AIR 1974 SC 31.

(iii) *Godse* v. *State of Maharashtra*, AIR 1961 SC 600.

(iv) *Sarat* v. *Khagendra*, AIR 1961 SC 334.

(v) *Krishan* v. *State of Andhra Pradesh*, (1975) Unreported Judgments of Supreme Court 951.

(vi) *Maru* v. *Union of India*, AIR 1980 SC 2147, paragraphs 59-60, 72 and 100.

(vii) *Kuljit* v. *Lt. Governor*, AIR 1982 SC 774.

(viii) *Harbans* v. *State of Uttar Pradesh*, AIR 1982 SC 849.

(ix) *Chennugadu, In re*, ILR (1955) Mad 92.

(x) *D.I.G.* v. *Rajaram*, AIR 1960 AP 259.

(xi) *Puttawwa, In re*, AIR 1959 Mys 116.

(xii) *Jaswant* v. *State of Punjab*, AIR 1967 Punj 155.

(xiii) *Hukam Singh* v. *State of Punjab*, AIR 1975 P&H 902.

---

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

(xiv) *Kehar Singh* v. *Union of India*, (1988) 4 SCC 693: AIR 1989 SC 653.

(xv) *State of Punjab* v. *Joginder Singh*, (1990) GLJ 1464 (SC).

Stay

Where the earlier petition for mercy has been rejected by the President, stay cannot be obtained by filing another petition; *Gurgnigben* (II) v. *State of Gujarat*, (1990) CR LJ 273, paragraph 7.

Presidential clemency and death sentence

From time to time, the questions of the President's power to commute the sentence of death into a lesser sentence comes up for discussion before the public. This is not a purely legal matter and involves several ethical and social implications. Unfortunately, a few misconceptions prevail on the subject, because of the failure to appreciate several important socio-legal aspects.

In India, the Constitution, by article 71(1), gives to the President the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence, *inter alia*, where the sentence is one of death. The Constitution does not purport to set out the criteria on the basis of which the Presidential powers are, exercised. Similar provisions exist in the United State Constitution where article II, section 2, gives the President the power to grant reprieves and pardons for offences against the United States, except in cases of impeachment. In American law, much more important is the power of the Governor to commute the sentence of death into one of imprisonment for life, being a power conferred by the Constitution of almost each State in the United States on the Governor. In the United Kingdom, the corresponding power has come to be known as the prerogative of mercy and is vested in the sovereign. Although, since 1965, death sentence for murder has been abolished in England, there is considerable literature concerning the exercise of this power by the sovereign in England during the period when the courts were empowered to award the death sentence for murder.

Manner of exercise

The Constitution of India is silent as to the manner in which the Presidential power of mercy is to be exercised. But it seems a reasonable view to take that this power, like other powers of the President, is expected to be exercised on the advice of the Cabinet. In England, the sovereign invariably acts on the advice of the Home Secretary in this regard ... and it is stated that on the outer side of the Home Secretary's chamber in England certain words have been inscribed which emphasise the tremendous power of life and death which so comes to be vested in the Home Secretary. In many States in the United States, the Constitution or the law has provided for Advisory Boards to advise the Governor in the exercise of clemency.

Position elsewhere

Consistent with the democratic principle that the people are the source of all political power, the Constitutions of the various States in the United States designate the institution that will wield the clemency power. The Advisory Board (wherever created) may have the Governor as a member, or may sit separately and send its recommendation to the Governor. In some States (*e.g.* Arizona, Delaware, Louisiana, Pennsylvania, Texas), the State Constitution prohibits the Governor from granting clemency where the Advisory Board has made an unfavourable recommendation. In a few States, the Constitution of the State vests the power exclusively in the Advisory Board. To this category belong Connecticut, Georgia, Idaho and Utah. Where Advisory Boards have been constituted, the Boards are, in some cases, staffed by elected officials while in others the Board is composed of members appointed by the Governor. In some States (*e.g.* Oklahoma, South Dakota, Texas), the nominations to the Board are made by a variety of agencies—namely, the Governor, the Chief Justice of the State Supreme Court and the President of the Court of Criminal Appeals.

Should India adopt a system of having an Advisory Board for advising the President in exercising the prerogative of mercy? There are some basic difficulties here. The advice of the Board cannot be made binding on the President without amending the Constitution. If the President rejects its advice, controversies are likely to be raised. Again, if the Board is to consist of persons other than sitting judges, the Board would find it embarrassing to reconsider and review matters considered by the high judiciary. If the Board is to consist of non-judicial personnel, it may often be found inadvisable to communicate to several persons the reasons for proposed exercise of prerogative of mercy.

It should, however, be mentioned that there is nothing to prevent the President from consulting the Attorney General. The terms of article 6(2) of the Constitution are wide enough to enable him to do so. In an exceptional case, the President can even refer the matter for opinion to the Supreme Court. Here again, the terms of article 143 of the Constitution are wide enough.

The New Commonwealth

Some years ago, De Smith, a reputed scholar of constitutional law, studied the 'New Commonwealth'—*i.e.* the group of countries especially comprising African, Caribbean and Far East members of the Commonwealth. He noted at that time in Malaysia, there is a Pardons Board—a Body with an unofficial and potentially non-political majority—to tender advice to the Head of the State. In Sierra Leone the Prime Minister assumes the responsibility. He must consult a Committee of the Cabinet for capital cases, but is not bound to accept their advice. Advisory Committees, including the Attorney General, exist in a few other countries of the New Commonwealth. Nigeria had an Advisory Committee with a medical practitioner as one of its members. Incidentally, the Ceylon Constitution of 1947-48 envisaged that the Governor-General shall not grant a pardon, respite or remission to an offender without first receiving, in every case, the advice of one of his Ministers. Further, where any offender shall have been condemned to suffer death by the sentence of any court, the Governor-General shall cause a report to be made by the judge who tried the case and also obtain the Attorney General's advice thereon. The report and the advice should then be sent to the Minister who is to advise the Governor General.

Considerations to be taken into account

What are the considerations usually taken into account in commuting the sentence of death to imprisonment for life? To this question, one can give the answer that these cannot be catalogued. Sir John. Anderson, in his evidence before the Royal Commission on Capital Punishment in England (1949-53), pointed out that it would be extremely difficult to give, in a short statement, "an adequate impression of the cumulative considerations which the Home Secretary has to take into account".

Earlier in 1907, Herbert Gladstone, Home Secretary, in a speech in the House of Commons, emphasised that numerous considerations are relevant and that the exercise of the prerogative does not depend on principles of strict law and justice, still less of sentiment. "It is a question of policy and judgement in each case, and in my opinion, a capital execution which, in its circumstances, creates horror and compassion for the culprit rather than a sense of indignation at his crime is a great evil"

Some of the important considerati ons that are taken into account in granting a reprieve had been noted by the Law Commission of India in its Report on Capital Punishment. These include want of premeditation, age, mental or physical condition of the offender, past conduct, external pressures which might have impaired independent judgment, medical abnormality falling short of legal insanity, and so on. Discovery of new evidence is also not ruled out. There is at least one recorded case in England of error. A petition for clemency submitted to the sovereign was referred to the Court of Criminal Appeal. At the hearing, Lord Goddard (Lord Chief Justice) admitted further evidence on the merits and it was found that the convicted person was totally innocent.

The English view is that where the Home Secretary feels that despite the verdict of the jury there is a scintilla of doubt about the prisoner's guilt, reprieve may be granted. Occasionally, it has been felt right to commute the sentence in defence to the widely spread or strong local expression of public opinion for mercy on the ground that it would do more harm than good if the result was to arouse sympathy for the offender and hostility to the law.

Need for the power

Writers on law and political science often put the fundamental question. Is there need for the prerogative of mercy? The Law Commission of India, in its Report on Capital Punishment (1967), examined the question at great length. Its Report (Vol. 1, pages 317-18 para, 1025) discusses several aspects of the prerogative. It is sometimes argued that in a country like India, where the sentence of death is not mandatory and the court is free to consider the circumstances relevant to the question of sentence, the prerogative of mercy is not needed. However, the Law Commission did not agree with this view. The Commission noted: "there are many matters which may not have been considered by the courts. The hands of the court are tied down by the evidence placed before it. A sentence of death passed by a court after consideration of all the materials placed before it may yet require reconsideration because of: (i) facts not placed before the court, (ii) facts placed before the court but not in the proper manner, (iii) acts discovered after the passing of the sentence, (iv) events which have developed after the passing of the sentence, and (v) other special features. Nor can one codify and select these special features which would be too numerous to lend themselves to codification. For these reasons, we do not recommend any change in the scope of these powers."

The truth of the matter is that law is made for man. Justice is much more than mere codes and precedents. There are occasions when justice and humanity demand that mercy be shown in the matter of sentence.

In the American case of *Grossman*, (1925) 257 U.S. 87, the Supreme Court pointed out that executive clemency exists to afford relief from undue harshness or evident mistakes in the operation or enforcement of the criminal law. "The administration of justice by the courts is not always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford a remedy, it has always been through essential in popular Governments, as well as in monarchies to vest in some authority other than the court, power to ameliorate or avoid particular judgments... Our Constitution confers this discretion on the highest office in the nation in confidence that he will not abuse it"

73. Extent of executive power of the Union.—(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty on agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State [1][***] to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

Council of Ministers

74. Council of Ministers to aid and advise President.—[1][(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:]

[2][Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.]

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

Notes on Article 74

Advice of Cabinet

By the peremptory provisions of article 74(1) as it now stands (*i.e.* after the 42nd and 44th Amendments) the President is bound in every case to act on the advice of the Cabinet. The amendment incorporates the view taken in *Samsher* v. *State of Punjab*, AIR 1974 SC 2192. For the latest English practice, *see*—

(i) Halsbury, 4th Ed., Vol. 8 paragraph 938.

(ii) Hood Philips, Constitutional and Administrative Law (1978), pages 148-49.

Cabinet Government

Basu, Constitutional Law of India, (1998) page 153, points out that the following propositions will appear to have been well established by convention in UK, with reference to Cabinet Government—

(1) The dissolution of the House of Commons is a "prerogative" of the Crown; but, since the advent of the Cabinet Government, the Crown has to exercise this prerogative on the advice of the Prime Minister. The theory behind the Prime Minister's right to advise dissolution is that when he loses the confidence of the House, he may, instead of resigning, assert that the House itself has ceased to reflect the will of the Electorate which constitutes, the "political sovereign". A dissolution has thus become a "privilege" of the Prime Minister, to appeal from the House of Parliament to the Electorate.

(2) But, a defeated Prime Minister has to elect between either of two alternatives, either to resign or to advise dissolution; he *cannot have both. "Either* the Government will resign and the Opposition come into power ....., or the Government will advise the Queen to dissolve Parliament". [Jennings, "Law and the Constitution" 5th Ed. p. 184].

Basu refers also to Stephen's Commentaries, 20th Ed. Vol I. p. 403; Parry, British Government 1969, p. 93; de Smith, "Constitutional Law 1971, p. 105; Wade & Phillips, Constitutional Law, 8th Ed., p. 121; Hood Phillips, Constitutional and Administrative Law, 6th Ed. 1978, pp. 144 - 151, in this context—

(3) The reason for the above view is, that no question of appeal to the Electorate from the Lok Sabha arises, where the Prime Minister has bowed down to the will of the Lok Sabha and has resigned. It would, therefore, be contrary to British conventions, (on which the power of dissolution rests), to urge that an advice of dissolution from a *resigning* Prime Minister would still be binding on the President.

---

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 13, for clause (1) (w.e.f. 3-1-1977).
2. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 11 (w.e.f. 20-6-1979).

(4) According to Basu, if the Prime Minister, who is defeated in the House or who loses the confidence of the House, refuses to resign, the President may dismiss him (which power, though obsolete in England, is confided in article 75(2) of the Indian Constitution);

(5) If the Prime Minister does resign, the President should at once offer an opportunity to the opposition to form a Government, in which case, the outgoing prime Minister can have no right to advise dissolution, and no right to retain office as the head of a care taker Government.

Confidentiality of Cabinet decisions

See *S.P. Gupta* v. *Union of India*, AIR 1982 SC 149, paragraphs 60-61 and *State of Rajasthan* v. *Union of India*, AIR 1977 SC 1361, paragraphs 82-83. *See* also notes on article 78.

Article 74(2) does not bar scrutiny of advice tendered by the Council of Ministers to the President.

Courts are justified in looking into the basis of the advice subject to the provisions of section 123 of the Evidence Act, *Kartar Singh* v. *State of Punjab*, JT (1994) 2 SC 423.

75. Other provisions as to Ministers.—(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

Notes on Article 75

Describing a person as Deputy Prime Minister is descriptive only, and such description does not confer on him any powers of Prime Minister, Hence, oath as Deputy Prime Minister is not invalid; *K.M. Sharma* v. *Devi Lal*, AIR 1990 SC 528 (Ranga Natha Misra and M.M. Punchhi, JJ.).

The Attorney-General for India

76. Attorney-General for India.—(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

Conduct of Government Business

77. Conduct of business of the Government of India.—(1) All executive actions of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules[1] to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

[2][***]

Notes on Article 77

Article 77, as per judicial decisions, applied to all *executive* action of the Government of India, including constitutional or statutory functions, and even including quasi-judicial powers. *See* the undermentioned decisions:

(i) *Samsher Singh* v. *State of Punjab*, AIR 1974 SC 2192.

(ii) *Union of India* v. *Sripati*, (1976) 1 SCWR 173.

(iii) *Kalyan Singh* v. *State of Uttar Pradesh*, AIR 1962 SC 1183.

(iv) *Sharma* v. *Union of India*, AIR 1970 Del 250.

(v) *Ananda* v. *Chief Secretary*, AIR 1966 SC 657.

78. Duties of Prime Minister as respects the furnishing of information to the President, *etc*.—It shall be the duty of the Prime Minister—

(a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Notes on Article 78

Cabinet Secrecy

Resolutions or other deliberations at meetings of State Cabinet and advice finally tendered in pursuance of such deliberations, are privileged from disclosure in court. But if Government produces them without any objection, the court can look into them. *See* the undermentioned decisions:

(i) *State of Punjab* v. *Sodhi Sukhdev*, AIR 1961 SC 512, 532.

(ii) *State of Madhya Pradesh* v. *Nandlal*, AIR 1987 SC 251.

See also Notes on article 74.

---

1. *See* Notification No. S.O. 2297, dated the 3rd November, 1958, Gazette of India, Extraordinary, 1958, Pt. II, Sec. 3(ii), p. 1315, as amended from time to time.
2. Clause (4) was ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 14 (w.e.f. 3-1-1977) and omitted by the Constitution (Forty-fourth Amendment) Act, 1976, sec. 12 (w.e.f. 20-6-1979).

CHAPTER II - PARLIAMENT

General

79. Constitution of Parliament.—There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

80. Composition of the Council of States.—(1) [1][[2][***] The Council of States] shall consist of—

(a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and

(b) not more than two hundred and thirty-eight representatives of the States [3][and of the Union territories].

(2) The allocation of seats in the Council of States to be filled by representatives of the States [3][and of the Union territories] shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art and social service.

(4) The representatives of each State [4][***] in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(5) The representatives of the [5][Union Territories] in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

[6][**81. Composition of the House of the People.**—(1) [7][Subject to the provisions of Article 331 [8][***], the House of the People shall consist of—

(a) not more than [9][five hundred and thirty members] chosen by direct election from territorial constituencies in the States, and

---

1. Subs. by the Constitution (Thirty-fifth Amendment) Act, 1974, sec. 3, for "The Council of States" (w.e.f. 1-3-1975).
2. The words "Subject to the provisions of paragraph 4 of the Tenth Schedule." omitted by the Constitution (Thirty-sixth Amendment) Act, 1975, sec. 5 (w.e.f. 26-4-1975).
3. Added by the Constitution (Seventh Amendment) Act, 1956, sec. 3.
4. The words and letters "specified in Part A or part B of the first Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 3.
5. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 3, for "States specified in Part C of the First Schedule".
6. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 4, for article 81.
7. Subs. by the Constitution (Thirty-fifth Amendment) Act, 1974, sec. 4, for "Subject to the provisions of article 331" (w.e.f. 1-3-1975).
8. The words and figure "and paragraph 4 of the Tenth Schedule" omitted by the Constitution (Thirty-sixth Amendment) Act, 1975, sec. 5 (w.e.f. 26-4-1975).
9. Subs. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987), sec. 63, for "five hundred and twenty-five members" (w.e.f. 30-5-1987).

(b) not more than [1][twenty members] to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1)—

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and number of seats allotted to it is, so far as practicable, the same throughout the State:

[2][Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions.]

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

[3][Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.]]

[4][**82. Readjustment after each census**.—Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House:

[4][Provided further that such readjustment shall take effect from such date as President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under this article.]]

83. Duration of Houses of Parliament.—(1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for [5][five

---

1. Subs. by the Constitution (Thirty-first Amendment) Act, 1973, sec. 2, for "twenty-five members".
2. Ins. by Constitution ((Thirty-first Amendment) Act, 1973, sec. 2.
3. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 15 (w.e.f. 3-1-1977).
4. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 16 (w.e.f. 3-1-1977).
5. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 4, for article 82.

years] from the date appointed for its first meeting and no longer and the expiration of the said period of [1][five years] shall operate as a dissolution of the House:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

84. Qualification for membership of Parliament.—A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

[2][(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;]

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

[3][**85. Sessions of Parliament, prorogation and dissolution.**—(1) The President shall form time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time—

(a) prorogue the Houses or either House;

(b) dissolve the House of the People.]

Notes on Article 85

See the undermentioned cases:

(i) *Rao* v. *Indira*, AIR 1971 SC 1002.

(ii) *Indira* v. *Rajnarain*, AIR 1975 SC 2299.

86. Right of President to address and send messages to Houses.—(1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration.

87. Special address by the President.—(1) At the commencement of [4][the first session after each general election to the House of the People and at the commencement of the first session of each year] the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

---

1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 13, for "six years" (w.e.f. 20-6-1979). The words "six years" were subs. for the original words "five years" by the Constitution (Forty-second Amendment) Act, 1976, sec. 17 (w.e.f. 3-1-1977).
2. Subs. by the Constitution (Sixteenth Amendment) Act, 1963, sec. 3, for clause (a).
3. Subs. by the Constitution (First Amendment) Act, 1951, sec. 6, for article 85.
4. Subs. by the Constitution (First Amendment) Act, 1951, sec. 7, for "every session".

(2) Provision shall be made by rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address [1][***].

88. Rights of Ministers and Attorney-General as respects Houses.—Every Minister and the Attorney-General for India shall have the right to speak in, and otherwise to take part in the proceedings of either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

Officers of Parliament

89. The Chairman and Deputy Chairman of the Council of States.—(1) The Vice-President of India shall be *ex officio* Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof and, so often as the office of Deputy Chairman becomes vacant, the Council shall choose another member to be Deputy Chairman thereof.

90. Vacation and resignation of, and removal from, the office of Deputy Chairman.—A member holding office as Deputy Chairman of the Council of States—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time, by writing under his hand addressed to the Chairman, resign his office; and

(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.—(1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

92. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or, as the case may be, the Deputy Chairman, is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Council of States while any resolution for the removal of the Vice-

1. The words "and for the precedence of such discussion over other business of the House" omitted by the Constitution (First Amendment) Act, 1951 sec. 7.

President from his office is under consideration in the Council, but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings.

93. The Speaker and Deputy Speaker of the House of the People.—The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

94. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.—A member holding office as Speaker or Deputy Speaker of the House of the People—

(a) shall vacate his office if he ceases to be a member of the House of the People;

(b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

95. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.—(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

96. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 95 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker, or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

97. Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.—There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

98. Secretariat of Parliament.—(1) Each House of Parliament shall have a separate secretarial staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

99. Oath or affirmation by members.—Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.—(1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker. The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House.

(4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

Disqualifications of Members

101. Vacation of seats.—(1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of a House of the Legislature of a State [1][***] and if a person is chosen a member both of Parliament and of a House of the Legislature of [2][a State], then, at the expiration of such period as may be specified in rules[3] made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament—

(a) becomes subject to any of the disqualifications mentioned in [4][clause (1) or clause (2) of article 102], or

[5][(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be,] his seat shall thereupon become vacant:

[6][Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.]

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

102. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

---

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for "such a State".
3. *See* the Prohibition of Simultaneous Membership Rules, 1950, published with the Ministry of Law Notification No. F. 46/50-C, dated the 26th January, 1950, Gazette of India, Extraordinary, p. 678.
4. Subs. by the Constitution (Fifty-second Amendment) Act, 1985, sec. 2 for "clause (1) of article 102" (w.e.f. 1-3-1985).
5. Subs. by the Constitution (Thirty-third Amendment) Act, 1974, sec. 2, for sub-clause (b).
6. Ins. by the Constitution (Thirty-third Amendment) Act, 1974, sec. 2.

[1][*Explanation.*—For the purposes of this clause] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

[2][(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.]

Notes on Article 102

Principle debarring holders of office of profit

The principle debarring holders of office of profit 'under the Government' from being a member of Parliament is that such a person cannot exercise his functions independently of the executive of which he is a part. The principle can be traced to developments in English constitution history, in the course of which it came to be established that the Crown and its officers shall have no say in Parliament.

Material date

Material date is the date of scrutiny of nomination, subject to the qualification that when a conviction is set aside on appeal, the appellate order has retrospective effect. *See* the undermentioned cases:

(i) *Amritlal* v. *Himatbhai*, AIR 1968 SC 1455.

(ii) *Dilip* v. *State of Madhya Pradesh*, AIR 1976 SC 133.

(iii) *Sitaram* v. *Ramjibhai*, AIR 1987 SC 1293.

(iv) *Pashupati* v. *Nem*, (1984) 2 SCC 404, paragraphs 18 and 42.

Office of profit

The office of profit must be under the Government, Contrast articles 58(2) and 66(4) covering local and other authorities, *See* the undermentioned cases:

(i) *Abdul Shakoor* v. *Election Tribunal*, AIR 1958 SC 52, 55.

(ii) *Kanta* v. *Manak Chand*, AIR 1970 SC 694.

(iii) *Ashok* v. *Ajoy*, AIR 1985 SC 211.

(iv) *Bhagwati* v. *Rajeev*, AIR 1985 SC 1534.

Code of conduct

Code of conduct has no statutory force, *Vidadala Harinadhababu* v. *N.T. Ramarao*, AIR 1990 A.P. 20 (FB).

[3]**[103. Decision on questions as to disqualifications of members.**—(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.]

---

1. Subs. by the Constitution (Fifty-second Amendment) Act, 1985, sec. 3, for "(2) For the purposes of this article" (w.e.f. 1-3-1985).
2. Ins. by the Constitution (Fifty-second Amendment) Act, 1985, sec. 3 (w.e.f. 1-3-1985).
3. Article 103 has been successively subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 20 (w.e.f. 3-1-1977) and the Constitution (Forty-fourth Amendment) Act, 1978, sec. 14 to read as above (w.e.f. 20-6-1979).

104. Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified.—If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 99, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

Powers, Privileges and Immunities of Parliament and its Members

105. Powers, privileges, *etc.* of the Houses of Parliament and of the members and committees thereof.—(1) Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, [1][shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act 1978.]

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

Notes on Article 105

Scope

Parliamentary privilege is the subject-matter of this article with which one should compare article 194 concerned with privileges of Members of State Legislatures. Although the expression 'privileges' occurs in article 105(3) and article 194(3) and is historically correct, having regard to the terminology used in England, it should be pointed out that the current opinion in England is not in favour of retaining the word 'privilege'.

Freedom of speech

Clause (1) confers the freedom of speech in Parliament, but this is subject to the provisions of the Constitution and to the rules and standing orders of Parliament. *See* in Particular, articles 118, 121, 208 and 211 and the case mentioned below:

Sharma v. *Sri Krishna*, AIR 1959 SC 395, 409.

Publication of proceedings

Immunity from liability as regards speeches in parliament and as regards publication thereof under the authority of the House is conferred by clause (2). This immunity is not subject to the provisions of the Constitution.

---

1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 15, for certain words (w.e.f. 20-6-1979).

The underlying principle has been stated to be this, namely, that people's representatives should be free to express themselves without fear of legal consequences. Of course, the immunity is confined to what is said within the House. For publications by persons other than those authorised by the House, see article 361A, inserted by the Constitution (Forty-fourth Amendment) Act, 1978. The undermentioned cases may be seen as to liability for publication:

(i) *Jatish* v. *Harisadhan* (1956) 60 CWN 971; on appeal, AIR 1961 SC 613.

(ii) *Surendra* v. *Naba Krishna*, AIR 1958 Ori 168, 175 (Qualified privilege for publication by member outside House).

(iii) *Ramalingam* v. *Daily Thanthi*, AIR 1975 Mad 209.

(iv) *Suresh v Punit*, AIR 1951 Cal 176 (Member not liable for publication by newspaper of its own).

(v) *Tejkiron* v. *Sanjiva*, AIR 1970 SC 1573.

Other privileges

The other privileges are not verbally with the English practice (as was the position under the original text of the Constitution as enacted), but may be either 'defined by parliament by law' or, until so defined, shall be those immediately before the 44th Amendment. It may be mentioned that though the intermediate 42nd Amendments sought to make certain changes in article 105 *etc.* by section 21, that section had not been brought into force when the 44th Amendment again amended article 194. At present, then, one must again go to the English practice, because that was the position under the original text of the Constitution.

"Publication by or under the authority of a House"

The immunity under article 105(2) was previously confined to publication by or under the authority of a House; *Jatish Chandra Ghose* v. *Harisadhan*, AIR 1961 SC 613: (1961) 3 SCR 486, affirming *Jatish Chandra Ghose* v. *Harisadhan Mukherjee*, AIR 1956 Cal 433.

[*See* now Article 361A]

Effect of the 42nd and 44th Amendment Acts

Basu has pointed out (Constitutional Law, page 215) that the changes made in the text of article 105(3) make it clear that, so long as the Legislature is not able to define its privileges by making a law, there cannot be a vacuum. It is provided in clause (3) of article 105 as well as in Article 194 (as amended), that till such legislation is enacted, each House and its committees shall have those privileges which they had at the commencement of the Constitution (Forty-fourth Amendment) Act. In other words, the existing privileges shall continue, until they are replaced by privileges defined by law. *Cf. Ref. under Article 143*, AIR 1965 SC 745; *State* v. *Sudarsan*, AIR 1984 Ker 1, paragraph 29.

Amendment of 1974

By the amendment of 1974—

(i) power has been given to the Speaker or Chairman, to inquire into the genuineness of a letter of resignation coming from a member, and

(ii) the termination of membership by resignation has been made dependent upon the *acceptance* of such resignation by the Speaker or Chairman. A member of the Union or a State Legislature has thus lost the privilege which constitutional functionaries enjoy, namely, the termination of his office by unilateral action, and the resignation has been made dependent upon acceptance, as in the case of ordinary government servants; *Union of India* v. *Gopal*, AIR 1978 SC 694, paragraphs 84-85.

So long as the resignation is not accepted, it may be withdrawn or revoked by the member, by addressing a letter to that effect, to the Speaker or Chairman; *Union of India* v. *Gopal*, AIR 1978 SC 694, paragraphs 84-85.

106. Salaries and allowances of members.—Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India.

Legislative Procedure

107. Provisions as to introduction and passing of Bills.—(1) Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall subject to the provisions of article 108, lapse on a dissolution of the House of the People.

108. Joint sitting of both Houses in certain cases.—(1) If after a Bill has been passed by one House and transmitted to the other House—

(a) the Bill is rejected by the other House; or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill; or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it.

The President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days.

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint siting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

(a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed; and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.

109. Special procedure in respect of Money Bills.—(1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

110. Definition of "Money Bill".—(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any

financial obligations undertaken or to be undertaken by the Government of India;

(c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;

(d) the appropriation of moneys out of the Consolidated Fund of India;

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or

(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

111. Assent to Bills.—When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

Procedures in Financial Matters

112. Annual financial statement.—(1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India—

(a) the emoluments and allowances of the President and other expenditure relating to his office;

(b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) (i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court,

(ii) the pensions payable to or in respect of Judges of the Federal Court,

(iii) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercises jurisdiction in relation to any area included in [1][a Governor's Province of the Dominion of India];

(e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor- General of India;

(f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(g) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

113. Procedure in Parliament with respect to estimates.—(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

114. Appropriation Bills.—(1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—

(a) the grants so made by the House of the People; and

(b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for the words "a Province Corresponding to a State specified in Part A of the First Schedule", (w.e.f. 19-10-1956).

so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.

115. Supplementary, additional or excess grants.—(1) The President shall—

(a) If the amount authorised by any law made in accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.

(2) The provisions of articles 112, 113 and 114 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.

116. Votes on account, votes of credit and exceptional grants.—(1) Notwithstanding anything in the foregoing provisions of this Chapter, the House of the People shall have power—

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 113 for the voting of such grant and the passing of the law in accordance with the provisions of article 114 in relation to that expenditure;

(b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year; and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.

(2) The provisions of articles 113 and 114 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.

117. Special provisions as to financial Bills.—(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

Procedure Generally

118. Rules of procedure.—(1) Each House of Parliament may make rules for regulations, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People, or in his absence such person as may be determined by rules of procedure made under clause (3), shall preside.

119. Regulation by law of procedure in Parliament in relation to financial business.—Parliament may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, each House of Parliament in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of India, and, if and so far as any provision of any law so made is inconsistent with any rule made by a House of Parliament under clause (1) of article 118 or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.

120. Language to be used in Parliament.—(1) Notwithstanding anything in Part XVII, but subject to the article 348, business in Parliament shall be transacted in Hindi or in English:

Provided that the Chairman of the Council of States or Speaker of the House of the People, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

121. Restriction on discussion in Parliament.—No discussions shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties expect upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

122. Courts not to inquire into proceedings of Parliament.—(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

CHAPTER III – LEGISLATIVE POWERS OF THE PRESIDENT

123. Power of President to promulgate Ordinances during recess of Parliament.—(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

Explanation.—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

[1][***]

Notes on Article 123

Scope

This article is intended to enable the President to promulgate Ordinances during the recess of Parliament. The President's power is no higher and no lower than that of the law-making power of the Parliament. The satisfaction of the President must be as to the existence of circumstances which render it necessary for him to take immediate action and such satisfaction has to be on the advice of the Cabinet. Undermentioned decisions illustrate these propositions:

---

1. Clause (4) was ins. by the Constitution (Thirty-eighth Amendment) Act, 1975, sec. 2 (retrospectively) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 16 (w.e.f. 20-6-1979).

(i) *Cooper* v. *Union of India*, AIR 1970 SC 564.
(ii) *A.K. Roy* v. *Union of India*, AIR 1982 SC 710.
(iii) *State of Rajasthan* v. *Union of India*, AIR 1977 SC 1361.
(iv) *T. Venkata Reddy* v. *State of Andhra Pradesh*, AIR 1985 SC 724.
(v) *Nagaraj* v. *State of Andhra Pradesh*, AIR 1985 SC 551.
(vi) *Satpal* v. *Lt. Governor*, AIR 1979 SC 1550.

Effect of duration

As pointed out above, the law making power of the President is co-extensive as regards all matters except duration; with the law-making power of Parliament, it follows that the power is subject to constitutional provisions, particularly those regarding fundamental rights. In respect of the subject-matter of Ordinances, the position is the same as applies to Parliament under the constitutional scheme of distribution of legislative powers between the Union and the States. undermentioned decisions illustrate these aspects:

(i) *State of Punjab* v. *Mohar Singh*, AIR 1955 SC 84.
(ii) *Garg* v. *Union of India*, AIR 1981 SC 2138.
(iii) *T. Venkata Reddy* v. *State of Andhra Pradesh*, AIR 1985 SC 724.
(iv) *Nagaraj* v. *State of Andhra Pradesh*, AIR 1985 SC 551.
(v) *State of Orissa* v. *Bhupendra*, AIR 1962 SC 945, 955.

Repromulgation

While no case has gone to the Supreme Court regarding repromulgation of Ordinances by the Union, notice must be taken of the Supreme Court judgment holding that successive repromulgation of Ordinances with the same text by the Governor of Bihar, without any attempt to get the Bills passed by the State Assembly while it was in session, coupled with the habitual practice of proroguing the Assembly merely in order to enable the Governor to repromulgate an Ordinance in a routine manner would be a fraud on the Constitution, and the Ordinance so repromulgated is liable to be struck down; *D.C. Wadhwa* v. *State of Bihar*, AIR 1987 SC 579.

CHAPTER IV — THE UNION JUDICIARY

124. Establishment and Constitution of Supreme Court.—(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven[1] other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4).

[2][(2A). The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.]

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court

1. Now "twenty-five", *vide* Act 22 of 1986, sec. 2.
2. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, sec. 2.

unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

Explanation I.—In this clause "High Court' means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district Judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-third of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4):

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

Notes on Article 124

Consultation

Consultation must be effective, and implies exchange of views after examining the merits, but does not mean concurrence. *See* the undermentioned cases:

(i) *S.P. Gupta* v. *Union of India*, AIR 1982 SC 149.

(ii) *Union of India* v. *Sankalchand Seth*, AIR 1977 SC 2328.

Appointment of Judge

A nine Judges Bench of the Supreme Court *In re Presidential Reference*, AIR 1999 SC 1, has held that recommendations made by the Chief Justice of India without complying with the "norms and requirements of the consultation process" were not binding on the Central Government.

In July 1998, The President has sought the Court's opinion on nine issues relating to the appointment of Apex Court judges and transfer of High Court Judges. The 11th Presidential Reference sought clarification on certain doubts over the consultation process to be adopted by the Chief Justice of India as stipulated in the 1993 case relating to judges appointment and transfer opinion.

The following propositions were laid down:—

(a) As to the appointment of the Supreme Court Judges, the Chief Justice of India should consult a collegium of four seniormost Judges of the Apex Court. Even if two judges give an adverse opinion, the CJI should not send the recommendation to the Government.

(b) Giving primacy to the CJI's opinion as laid down in the 1983 judgment, the judges said, "The collegiam should make the decision in consensus and unless the opinion of the collegium is in conformity with that of the Chief Justice of India, no recommendation is to be made."

(c) Regarding the transfer of High Court judges, in addition to the collegium of four seniormost Judges, the Chief Justice of India was obliged to consult the Chief Justice of the two High Courts (one from which the Judge was transferred and the other receiving him).

(d) In regard to the appointment of High Court Judges, the CJI was required to consult only two seniormost Judges of the Apex Court.

(e) The consultation process requires "consultation of plurality of Judges." The sole opinion of the CJI does not constitute the "consultation" process.

(f) The transfer of puisne Judges of the High Courts was judicially reviewable, only if the CJI had recommended the transfers without consulting four seniormost Judges of the Apex Court and two Chief Justices of the High Courts concerned.

(g) The requirement of consultation by the CJI with his colleagues does not exclude consultation with those Judges who are conversant with the affairs of the High Court concerned — either as a parent court (the High Court from where the transfer is made) or who have occupied the office of a Judge or Chief Justice of that Court on transfer from his parent High Court or any other court.

(h) Strong and cogent reasons must exist regarding a person's name not being recommended. Only positive reasons may be given. The views of the other Judges consulted by the CJI should be in writing and the same should be conveyed to the Government, along with the recommendation by the CJI. (Judgment dated 28th October, 1998).

125. Salaries, *etc.*, of Judges.—[1][(1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.]

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

126. Appointment of acting Chief Justice.—When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

127. Appointment of *ad hoc* Judges.—(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and

---

1. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986, sec. 2, for clause (1) (w.e.f. 1-4-1986).

after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an *ad hoc* Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

128. Attendance of retired Judges at sittings of the Supreme Court.—Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court [1][or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court] to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

129. Supreme Court to be a court of record.—The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Notes on Article 129

Contempt power

The power of contempt of court has come U.P. before the Supreme Court on numerous occasions, but most of the important propositions will be found discussed in the undermentioned cases:

(i) *Daphtary* v. *Gupta*, AIR 1971 SC 1132.

(ii) *Namboodripad* v. *Nambiar*, AIR 1970 SC 2015.

(iii) *Brahma Prakash* v. *State of Uttar Pradesh*, (1953) SCR 1169.

Income-tax tribunal

Supreme Court has jurisdiction to punish for contempt of Income Tax Appellate Tribunal. It is a national tribunal; *I.T. Appellate Tribunal* v. *V.K. Agarwal*, AIR 1999 SC 452.

130. Seat of Supreme Court.—The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time; appoint.

131. Original jurisdiction of the Supreme Court.—Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

(a) between the Government of India and one or more States; or

---

1. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, sec. 3.

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

[1][Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, named or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.]

Notes on Article 131

In interstate water disputes, jurisdiction is excluded; *T.N. Cauvery Sangam* v. *Union of India*, (1990) 2 SCJ 547.

[2]**[131A. Exclusive jurisdiction of the Supreme Court in regard to question as to constitutional validity of Central Laws.**—[*Rep. by the Constitution (Forty-third Amendment Act, 1977, sec. 4 (w.e.f. 13.4.1978.*]]

132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.—(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, [3][if the High Court certifies under article 134A] that the case involves a substantial question of law as to the interpretation of this Constitution.

[4][***]

(3) Where such a certificate is given, [5][***] any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided [5][***].

Explanation.—For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

Notes on Articles 132 to 136

Article 132 deals with the appellate jurisdiction of the Supreme Court in Constitutional cases. It must be read with article 134A [inserted by the Constitution (Forty-fourth Amendment) Act, 1978] under which, *inter alia*, if a substantial question of interpretation of the Constitution is involved, the High Court must grant a certificate. Unlike article 133(1)(a), article 132(1) does not require that the question must be of general importance.

Article 133 deals with the appellate jurisdiction of the Supreme Court from High Courts in civil cases. As amended by the Constitution (Thirtieth Amendment) Act, 1972, the article allows such appeal if (i) the case involves a substantial question of law of general importance, and (ii) in the opinion of the High Court, the said question needs to be decided by the Supreme Court. The certificate is issued under article 134A.

---

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 5, for the proviso.
2. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 23 (w.e.f. 1-2-1977).
3. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 17, for "if the High Court certifies" (w.e.f. 1-8-1979).
4. Clause (2) omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 17, (w.e.f. 1-8-1979).
5. Certain words omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 17, (w.e.f. 1-8-1979).

Article 134(1) allowed criminal appeals to the Supreme Court from High Courts in the specified cases. Clauses (a) and (b) involve a death sentence. Clause (c) is much wider. If the High Court certifies under article 134A that the case is a fit one for appeal to the Supreme Court, then the appeal is competent.

As regards article 134(2), *see* the following:—

(i) Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

(ii) Section 379 of the Code of Criminal Procedure, 1973.

(iii) *Ram Kumar* v. *State of Madhya Pradesh*, AIR 1975 SC 1026, paragraph 4.

(iv) *Padda Narayana* v. *State of Uttar Pradesh*, AIR 1975 SC 1252.

Article 135 saves jurisdiction under existing law, conferred on the Federal Court, which will not be exercised by the Supreme Court.

Article 136 confers on the Supreme Court jurisdiction to entertain by special leave appeal.

The jurisdiction is of the widest amplitude as regards—

(a) the court from whose decision the appeal may be entertained (but courts martial are excluded);

(b) the nature of the decision that may be appealed from;

(c) the nature of the proceeding in which appeal may be entertained;

(d) the grounds that may be allowed to be raised for seeking such special leave.

133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.—[1][(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India [2][if the High Court certifies under article 134A]—

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.]

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

Notes on Article 133

See Notes under article 132.

134. Appellate jurisdiction of Supreme Court in regard to criminal matters.—(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

---

1. Subs. by the Constitution (Thirtieth Amendment) Act, 1972, sec. 2, for clause (1) (w.e.f. 27-2-1973).

2. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 18, for "if the High Court certifies—" (w.e.f. 1-8-1979).

(c) [1][certifies under article 134A] that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

Notes on Articles 133 and 134

See notes under article 132.

In a *State of Madhya Pradesh* v. *Narain Singh*, AIR 1989 SC 1789: (1989) Cri LJ 2101, it was held that section 7(1) of the Essential Commodities Act, 1955 is so comprehensively worded that it covers acts done without intention and *mens rea* is not a necessary ingredient of the offence. Hence the accused was found guilty for violation of the Fertilizers Movement Control Order, 1973. However, the court while setting aside the order of acquittal, declined to make any order of punishment, because more than 15 years had gone by since the accused was acquitted by the trial Magistrate. The case arose under section 7 as it stood before its amendment in 1974, but after its amendment in 1967. The 1967 amendment had introduced the words "whether knowingly, intentionally or otherwise" in the Essential Commodities Act. By the 1974 amendment, these words have been removed. In a case under article 134(1)(c), conviction may be quashed where charge is framed after 17 years; *State of Uttar Pradesh* v. *Purshottam*, AIR 1991 SC 1015.

There is no ground for restricting the expression "civil proceeding" (in article 133) to those proceedings which arise out of civil suits (or proceedings which are tried as civil suits); nor is there any rational basis for excluding, from its purview, proceedings instituted and tried in the High Court in exercise of its jurisdiction under article 226, where the aggrieved party seeks the relief against infringement of civil rights by authorities purporting to act in the exercise of the powers conferred upon them by revenue statutes, or disputes between landlord and tenant; *Prasanna Kumar Ray Karmakar* v. *State of West Bengal*, AIR 1996 SC 1517 (paragraphs 11, 12).

Question of limitation cannot be said to be a pure question of law as, it will require investigation into facts, to ascertain the exact dates of accrual of the cause of action. The Supreme Court declined to entertain the plea of limitation. Plea of *res judicata* cannot be raised for the first time; *Deva Ram* v. *Ishwarchand*, AIR 1996 SC 378 (paragraph 30).

[2][**134A. Certificate for appeal to the Supreme Court**.—Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134—

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.

---

1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 19, for "certifies" (w.e.f. 1-8-1979).
2. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 20 (w.e.f. 1-8-1979).

Notes on Article 134A

See notes under article 132.

135. Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.—Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

Notes on Article 135

See notes under article 132.

136. Special leave to appeal by the Supreme Court.—(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

Notes on Article 136

See notes under article 132.

Scope

Supreme Court would not grant special leave to appeal from a decision of the Central Administrative Tribunal directing re-fixation of seniority on a particular basis, where there is no substantial injustice. The court observed: "What is baffling is the filing of the Special Leave Petition by the Union Government, not because of injustice to Assistant Military Estate Officers as that has been taken care of by the Tribunal by protecting all those who are working, but because if it works out seniority of Assistant Military Estates Officer (Technical) from back date, it may have to pay substantial amount and creation of supernumerary posts may further entail cost. *Justice is alert to difference and sensitive to discrimination.* It cannot be measured in terms of money"; *Union of India* v. *M.P. Singh*, AIR 1990 SC 1098, 1103, paragraph 8.

Finding of Drug Controller was that renewal Certificate was forged and fabricated. Finding was affirmed by the High Court in writ petition. Certificate was given by the Licensing Authority that the renewal certificate bore his signature. Such document was not produced before the Drug Controller nor before the High Court in writ petition. It was held that the document cannot be considered by the Supreme Court in special leave petition, particularly in the absence of affidavit of the Licensing Authority vouchsafing genuineness of the document. It was more so, because the finding as aforesaid was a finding of fact based on material placed before the court; *Medimpex (India) Pvt. Ltd.* v. *Drug Controller-cum-Chief Licensing Authority*, AIR 1990 SC 544.

Refusal

Where Supreme Court refused to grant special leave to appeal, it cannot be construed as a seal of approval. "The doctrine or merger of fusing the judgment of the lower court in that of the appellant court does not apply in such a case"; *Punjab State Electricity Board* v. *Ashok Kumar*, AIR 1990 P&H 117, paragraphs 24 and 26 (FB).

When leave may be granted

Where the judgment is tainted with serious legal infirmities, or is founded on a legal

construction which is wrong; *Balakrishna* v. *Matha*, (1991) Cri LJ 69, paragraph 11 (SC).

If the High Court sets aside a finding of fact by a tribunal, the Supreme Court will interfere; *Prakash & Co.* v. *Municipal Corpn.*, 1 UJSC 553, paragraph 12.

Petition for leave would be granted where approach of the court whose judgment is under appeal is wrong in law; *Munisami* v. *Ranganathan*, (1991) 2 SCC 139, paragraph 9.

When leave may be refused

Where granting the petition would mean multiple claim on same cause of action, court may disallow the petition; *Sawhney* v. *L.I.C.*, (1991) 2 SC 318, paragraphs 2 and 10.

Unnecessary appeal by Government may be discouraged where only one party's liability is involved; *Union of India* v. *M.P. Singh*, AIR 1990 SC 1098.

An order of the High Court will not be set aside if it has not caused any prejudice to petitioner even though no notice was given to the petitioner; *Gupta* v. *U.P.S.E.B.*, AIR 1991 SC 1309, paragraphs 4-5.

Supreme Court would be reluctant to interfere with an administrative decision as to the needs of the department; *Arun* v. *State of Bihar*, AIR 1991 SC 1514, paragraph 13 (Case of appointment).

An appointment made on the recommendation of Selection Committee cannot be set aside by the High Court without valid reasons; *University of Jodhpur* v. *Purohit*, (1990) 1 UJSC 235, paragraph 11.

The Supreme Court would not disturb the existing position if it would lead to injustice; *Thapar Institute* v. *Abhinav*, (1990) 1 UJSC 699, paragraph 8.

Scope of interference

In cases of professional misconduct Supreme Court would consider only whether on the facts found by the High Court such misconduct is established; *Chagki* v. *Tiburgba*, (1990) 1 UJSC 4, paragraph 18.

Grounds

Where the High Court has dismissed a writ petition *in limine* the scope of appeal to the Supreme Court is limited to the grounds set forth in the petition; *Sat Pal Chopra* v. *Director-cum-Joint-Secretary*, AIR 1991 SC 970, paragraph 3.

New point

The Supreme Court would not allow a new point (which was not taken or not pressed before the High Court) to be raised before it, or which was sought to be introduced by filing additional grounds; *Nityanandakar* v. *State of Orissa*, AIR 1991 SC 1134, paragraph 11.

Where the point could have been urged before the High Court under article 226 or 227, the Supreme Court would not permit the appellant to raise it for the first time before it, nor to assail an undertaking given by him in the High Court; *Gosain* v. *Yashpal*, AIR 1993 SC 352, paragraph 13.

Where the High Court has examined all the evidences, the Supreme Court will not interfere on technical ground; *Ajit* v. *State of Punjab*, (1991) Cri LJ 2008 (SC), paragraphs 3 and 4.

Fraud

Where the petitioner obtained a special leave by suppressing the fact that an earlier petition by him was dismissed, the court directed recall of the order releasing him on bail; *Suraj* v. *Bharat*, (1990) 1 UJSC 135, paragraph 3.

Similarly, bail was recalled on the basis of fraud practised upon the court; *Surinder* v. *Delhi Administration*, (1990) Supp SCC 610.

Court may refuse relief to a petitioner who has taken reckless steps without recourse to law; *Krishna* v. *Shobha*, (1990) 1 UJSC 71, paragraph 10.

Question of fact

Where the High Court has completely missed the real points requiring determination and has on erroneous grounds discredited the evidence, the Supreme Court would be justified in going into the evidence to avoid grave injustice; *Sham Sunder* v. *Puran*, (1990) 4 SCC 731.

The Supreme Court will not reassess the evidence at large and come to a fresh opinion as to the innocence or guilt of the accused, so as to interfere with a concurrent finding of fact by the court below, except where there is some serious infirmity in the appreciation of the evidence, and the finding is perverse; Na*rendra* v. *State of Uttar Pradesh*, (1991) 2 SCC 622, paragraphs 28-29.

(i) *Mahesh* v. *State of Delhi*, (1991) Cri LJ 1703, paragraph 11.

(ii) *Nain Singh* v. *State of Uttar Pradesh*, (1991) 2 SCC 432, paragraph 24.

In the absence of perversity concurrent finding of fact is not disturbed; *Mehtab Singh* v. *State of Gujarat*, (1991) Cri LJ 2325 (SC), paragraph 2.

Supreme Court will not ordinarily interfere with appreciation of the evidence by High Court; *State of Madhya Pradesh* v. *Orient Paper*, (1990) 1 UJSC 232, paragraph 2.

Mixed questions of fact and law not argued before the lower courts cannot be raised before Supreme Court; *Bhandari D.C.C.B.* v. *State of Maharashtra*, AIR 1993 SC 59, paragraph 10.

Questions of fact can not be raised for the first time before the Supreme Court; *State of Karnataka* v. *S.G.P. Co.*, AIR 1991 SC 1307; *Uduman* v. *Astam*, AIR 1991 SC 1020 paragraph 19.

Criminal Cases

In criminal cases under O. XL, r. 7 of the Supreme Court Rules, no review lies except on ground of error apparent on the face of the record; *State of Haryana* v. *Prem*, AIR 1990 SC 538, paragraphs 2-6.

In an appeal against acquittal the Supreme Court would be justified to interfere when approach of the High Court is far from satisfactory; *Anvaruddin* v. *Shakoor*, AIR 1990 SC 1242.

Where the High Court has completely misdirected itself in reversing the order of conviction by the trial court; *Gaurishankar* v. *State of Uttar Pradesh*, AIR 1990 SC 709.

Where the conclusion arrived by the court below is such as to shake the conscience, the Supreme Court would strike it down whether the judgment is one of conviction or acquittal; *Mahesh* v. *State of Delhi*, (1991) Cri LJ 1703 (SC), paragraph 11.

Even after a death sentence has been confirmed and is not open to review, the Supreme Court may, in a petition under article 32 read with article 21 commute the sentence of death into one of life imprisonment on the ground of undue delay in execution of the sentence of death since it was confirmed, because a sentence of death is one thing and the sentence of death followed by lengthy imprisonment prior to execution is another; *Jamman* v. *State of Uttar Pradesh*, (1991) Cri LJ 439, paragraph 15.

In an appeal against conviction the High Court can interfere with concurrent judgments of criminal courts where the interest of justice so requires; *Lata Ram* v. *State of Uttar Pradesh*, (1990) 2 SCC 113.

The Supreme Court would interfere in a criminal case where the High Court has failed to notice the changed versions given by witnesses; *Rajan* v. *State of Bihar*, AIR 1991 SC 1377, paragraph 3.

In a criminal appeal the Supreme Court interferes if the decision appealed from shocks the sense of justice; *Mahesh* v. *State*, (1991) Cri LJ 1703 (SC), paragraph 11.

After quashing an order the Supreme Court itself may pass suitable orders instead of remanding the case to High Court; *Anand* v. *R.S.R.T.C.*, AIR 1991 SC 1003, paragraphs 11-12.

Supreme Court may set aside execution order in respect of a decree found to be nullity; *Sushil* v. *Gobind*, (1990) 1 SCC 1938.

Service matters

Ordinarily, Supreme Court does not interfere in punishment in service matters. But in exceptional cases it may do so; *Kartar Singh* v. *State of Punjab*, (1991) 2 SCC 635.

Effect

Dismissal of a special leave petition *in limine* does not preclude Supreme Court considering the point in subsequent appeal; *Scientific Adviser* v. *Daniel*, (1990) Supp SCC 374.

Relief

Apart from the merits of an appeal, the Supreme Court would expunge derogatory remarks, or aspersions made in a High Court judgment against a party or lawyer, which are not absolutely necessary for the decision of the case before the court, and that, without giving him an opportunity of explaining his conduct; *Mathur* v. *Pramod*, (1990) 1 UJSC 595.

137. Review of judgments or orders by the Supreme Court.—Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

Notes on Article 137

Scope

Writ petition and Civil Appeal were dismissed by the Supreme Court—Review petition was also dismissed. Matter was disposed of after a consideration of all points. Another petition (virtually by way of second review) raising same contentions is not maintainable; J. *Ranga Swamy* v. *Government of Andhra Pradesh*, AIR 1990 SC 535.

Application for review

Where the previous order was not an adjudicatory one but was disposed of on concession and the party subsequently applies for modification of that order, the application is not one for review; *Sudarshan Trading Co.* v. *P.P. Saffiya*, AIR 1991 SC 716, paragraph 8.

Grounds

Article 137 does not limit the grounds for review. However, these may be limited by—

(a) Parliamentary legislation, or

(b) Rules made by the Supreme Court.

Third party

Review petition by a third party is not maintainable, *Satvir Singh* v. *Baldeva*, AIR 1977 SC 169.

138. Enlargement of the jurisdiction of the Supreme Court.—(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction, and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

139. Conferment on the Supreme Court of powers to issue certain writs.—Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari*, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

[1][**139A. Transfer of certain cases.**—[2][(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.]

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.]

Notes on Article 139A

Scope

Article 139A does not whittle down powers of the court under articles 136 and 142; *Cholamandalam* v. *Radhika Synthetics*, AIR 1996 SC 1098.

140. Ancillary powers of Supreme Court.—Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

141. Law declared by Supreme Court to be binding on all courts.—The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Notes on Article 141

Scope

As to the scope of article 141, the most important judgments of the Supreme Court are the following:—

(i) *Moti Ram* v. *N.E.F. Rly*, AIR 1964 SC 600 (As to the effect of *obiter dicta*).

(ii) *Gasket Radiators* v. *E.S.I.C.*, (1985) 1 SCC 68 (Meaning of the expression on law declared).

(iii) *Asst. Collector* v. *Dunlop*, (1985) 1 SCC 260 (As to the effect of the expression binding).

(iv) *Star Co.* v. *Union of India*, AIR 1987 SC 179 (Binding nature of judgment).

(v) *Gourya* v. *Thakur*, AIR 1986 SC 1140 (Binding nature).

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 24 (w.e.f. 1-2-1977).
2. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 21, for clause (1) (w.e.f. 1-8-1979).

(vi) *Synthetics & Chemicals Ltd.* v. *State of Uttar Pradesh*, (1990) 1 SCC 109, paragraphs 3, 74, 80, 82, (Social changes and Supreme Court decisions).

This article 141 recognises the role of the Supreme Court to alter the law, in course of its function to interpret legislation, in order to bring the law in harmony with social changes; *P.L.O. Corp.* v. *Labour Court*, (1990) 3 SCC 632 (CB), paragraphs 59, 81.

Law declared

It is immaterial that the conclusion of the majority was arrived at by the several judges on different grounds or different processes of reasoning; *Ramesh* v. *Union of India*, AIR 1990 SC 560, paragraph 20.

What is binding is the ratio of the decision and not any finding on facts, or the opinion of the court on any question which was not required to be decided in a particular case, it is the principle found out upon a reading of the judgment as a whole in the light of the questions before the court, and not particular words or sentences; *C.I.T.* v. *S.E.W.*, AIR 1993 SC 43, paragraph 39.

The later court would not be bound by those reasons or propositions which were not necessary for the deciding the previous case; conversely, the later court should not unnecessarily expand the scope and authority of the precedent; *Krishan* v. *Union of India*, (1990) 4 SCC 207 (CB), paragraphs 19, 20.

There is no law declared where the court gives no reasons; *Supreme Court Employees* v. *Union of India*, AIR 1991 SC 334, paragraph 22.

Retrospective operation

Where the Supreme Court has expressly made its ratio prospective, the High Court cannot give it retrospective operation; *F.C.J.* v. *Narendra*, (1993) 1 UJSC 572, paragraph 7.

Binding

Where a State Government is a party and is duly represented before the Supreme Court, the decision of the court declaring a State Act to be *ultra vires* shall be binding on that State Government. Even a notice, as required by the Civil Procedure Code, was not served upon the Advocate General; *State of Gujarat* v. *Kasturchand*, AIR 1991 SC 695.

Obiter dicta

The Supreme Court has laid down that the following categories of decisions of the Supreme Court have no binding force:—

(a) *Obiter dicta, i.e.*, statements which are not part of the *ratio decidendi.*

(b) A decision *per incurium, i.e.*, a decision given in ignorance of the terms of a statute or rule having the force of a statute.

(c) A decision passed *sub-silentio, i.e.*, without any argument or debate on the relevant question.

(d) An order made with the consent of the parties, and with the reservation that it should not be treated as a precedent.

See the undermentioned cases:

(i) *Municipal Corporation* v. *Gurnam*, (1989) 1 SCR 101 (paragraphs 10-11);

(ii) *State of Uttar Pradesh* v. *Synthetics*, (1991) 4 SCC 139.

Reconsideration

The court would not depart from a long-settled interpretation solely depending upon the facts of a given case. Where, however, there has been no uniformity in previous decisions, the later court

would examine the principle in the light of the scheme of the Constitution and the materials placed before it; *Indra Sawhney* v. *Union of India*, AIR 1993 SC 477, paragraph 26A.

A Division Bench of two Judges cannot over turn the decision of another Bench of two Judges. If they are unable to agree, they should refer it to a larger Bench; *Sunderjas* v. *Collector*, AIR 1990 SC 261, paragraphs 16-20.

In reviewing an earlier decision, however, the court would take into consideration the fact that the said decision has been followed in a large number of cases. It would be particularly slow to disturb a unanimous decision of a Bench of five Judges.

Where, in a subsequent petition under article 32, the Supreme Court directs the petitioner to go before the High Court and directs the High Court to reconsider the matter, the High Court would not be fettered by the previous judgment of the High Court; *Commissioner of Police* v. *Jagadiswaranada*, AIR 1991 Cal 263, paragraph 9.

The Supreme Court directed the State Government to treat the complaint as an industrial dispute and to refer the same under section 10(1)(d) of the Industrial Disputes Act, 1947 to the Industrial Tribunal; *H.R. Adanthaya* v. *Sandoz*, JT (1994) 5 SC 176.

The Supreme Court awarded compensation to the wife (appellant) whose husband was living with another woman though there was no proof of a second marriage; *Laxmi Devi* v. *Satya Narain*, (1994) 5 SC 317.

142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, *etc*.—(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order[1] prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Notes on Article 142

Supreme Court can extend the benefit of its judgment to a case not in appeal; *Manganese Ore* v. *Chande*, AIR 1991 SC 520 paragraph 19; *Roshan* v. *S.R.C. Mills*, AIR 1990 SC 1881.

Scope of the relief

The Supreme Court can grant appropriate relief—

(a) where there is some manifest illegality, or

(b) where there is manifest want of jurisdiction or

(c) where some palpable injustice is shown to have resulted.

Such a power can be traced, either to—

(i) article 142, or

(ii) powers inherent in the court as guardian of the Constitution.

A.R. Antulay v. *R.S. Nayak*, AIR 1988 SC 1831 paragraph 190.

Cf. Union of India v. *Darshna Devi*, AIR 1997 SC 166.

---

1. *See* the Supreme Court (Decrees and Orders) Enforcement Order, 1954 (C.O. 47).

Elasticity

While considering the nature and ambit of Article 142, the Supreme Court in *Delhi Development Authority* v. *Skipper Construction Co. (P.) Ltd.*, AIR 1996 SC 2005, observed that it is advisable to leave this power undefined and uncatalogued, so that it remains elastic enough, to be moulded to suit the given situation.

143. Power of President to consult Supreme Court.—(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in [1][***] the proviso to article 131, refer a dispute of the kind mentioned in the [2][said proviso] to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

144. Civil and judicial authorities to act in aid of the Supreme Court.—All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

Notes on Article 144

Supreme Court may award exemplary costs against defaulting Government; *Dinesh* v. *Motilal College*, (1990) 4 SC 627, paragraph 6.

[3][**144A. Special provisions as to disposal of questions relating to constitutional validity of laws.**—[*Rep. by the Constitution (Forty-third Amendment) Act, 1977, sec. 5 (w.e.f. 13.4.1978).*]]

145. Rules of court, *etc.*—(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

(a) rules as to the persons practising before the Court,

(b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

[4][(cc) rules as to the proceedings in the Court under [5][article 139A];]

(d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;

(e) any judgment pronounced or order made by the Court may be received and rules as to the conditions the procedure for such review including the time within which applications to the Court for such review are to be entered;

---

1. The words, brackets and figure "clause (i) of" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for "said clause".
3. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 25 (w.e.f. 1-2-1977).
4. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 26 (w.e.f. 1-2-1977).
5. Subs. by the Constitution (Forty-third Amendment) Act, 1977, sec. 6, for "articles 131A and 139A" (w.e.f. 13-4-1978).

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

(g) rules as to the granting of bail;

(h) rules as to stay of proceedings;

(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

(j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the [1][provisions of [2][***] clause (3)], rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) [3][[4][***] The minimum number] of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

146. Officers and servants and the expenses of the Supreme Court.—(1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed

---

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 26, for "provisions of clause (3)" (w.e.f. 1-2-1977).
2. Certain words, figures and letters omitted by the Constitution (Forty-third Amendment) Act, 1977, sec. 6 (w.e.f. 13-4-1978).
3. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 26, for "The minimum number" (w.e.f. 1-2-1977).
4. Certain words figures and letters omitted by the Constitution (Forty-third Amendment) Act, 1977, sec. 6 (w.e.f. 13-4-1978).

by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the offices and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

Notes on Article 146

Power under article 146(2) is of legislative nature; *Supreme Court Employees Welfare Association* v. *Union of India*, AIR 1990 SC 334, paragraph 46.

147. Interpretation.—In this Chapter and in Chapter V of Part VI references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

CHAPTER V — COMPTROLLER AND AUDITOR-GENERAL OF INDIA

148. Comptroller and Auditor-General of India.—(1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

(2) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(3) The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule:

Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(4) The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

(6) The Administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.

Notes on Article 148

Article 148(5) does not preclude the President from referring the matter to the Pay Commission provided the final rules are made after consulting the Comptroller Deptt.; *K. Vasudavan Nair* v. *Union of India*, AIR 1990 SC 2295.

149. Duties and powers of the Comptroller and Auditor-General.—The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

[1][**150. Form of accounts of the Union and of the States.**—The accounts of the Union and of the States shall be kept in such form as the President may, [2][on the advice of] the Comptroller and Auditor-General of India, prescribe.]

151. Audit reports.—(1) The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor [3][***] of the State, who shall cause them to be laid before the Legislature of the State.

PART VI

THE STATES [4][***]

CHAPTER I — GENERAL

152. Definition.—In this Part, unless the context otherwise requires, the expression "State" [5][does not include the State of Jammu and Kashmir.]

CHAPTER II — THE EXECUTIVE

The Governor

153. Governors of States.—There shall be a Governor for each State:

[6][Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.]

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 27, for article 150 (w.e.f. 1-4-1977).
2. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 22, for "after consultation with" (w.e.f. 20-6-1979).
3. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
4. The words "IN PART A OF THE FIRST SCHEDULE" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
5. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for "means a State specified in Part A of the First Schedule".
6. Added by the Constitution (Seventh Amendment) Act, 1956, sec. 6.

154. Executive power of State.—(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

155. Appointment of Governor.—The Governor of a State shall be appointed by the President by warrant under his hand and seal.

156. Term of office of Governor.—(1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold for a term of five years from the date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

157. Qualifications for appointment as Governor.—No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

158. Conditions of Governor's office.—(1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office of profit.

(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

[1][(3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.]

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

159. Oath or affirmation by Governor.—Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that court available, an oath or affirmation in the following form, that is to say—

---

1. Ins. by the Constitution (Seventh Amendment) Act, 1956, sec. 7.

"I, A.B., do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of ..... (name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of ..... (name of the State)."

160. Discharge of the functions of the Governor in certain contingencies.—The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

161. Power of Governor to grant pardons, *etc.*, and to suspend, remit or commute sentences in certain cases.—The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

Notes on Article 161

The Power under article 161 is a statutory power which cannot be fettered by position such as sections 432, 433, 433A of the Indian Penal Code, 1960; *State of Punjab* v. *Joginder*, AIR 1990 SC 1396.

162. Extent of executive power of State.—Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof.

Notes on Article 162

Since the executive power of the State Executive is co-extensive with that of the State Legislature, it follows that the State Executive may make rules regulating any matter within the legislative competence of the State Legislature, without prior legislative authority, except where a law is required because the Rules so framed would violate any provision of the Constitution which requires legislation, *e.g.*, articles 265 and 302; *Pratibha* v. *State*, AIR 1991 Kant 205, paragraph 10.

In general, the court, would not exercise its power of judicial review to interfere with a policy made by the Government in exercise of its power under article 162, particularly where it involves technical, scientific or economic expertise; *Shri Sitaram Sugar Co. Ltd.* v. *Union of India*, AIR 1990 SC 1277, paragraph 56.

In case of any deviation, particularly when it has been done repeatedly, the presumption would be that the Authority has exercised his power of relaxation or the policy has been changed (without Formal amendment), and the later entrants cannot claim the benefit of the original instructions; *The Direct Recruit Class-II Engineering Officers' Association* v. *State of Maharashtra*, AIR 1990 SC 1607 (CB), paragraph 44.

Duty of high officers

Proper functioning of State administration should not be jeopardised owing to ego clashes between high officers. Such officers should be aware that power should be exercised for public good, and not for personal benefit; *State of Assam* v. *P.C. Misra*, AIR 1996 SC 430, paragraph 11.

The Government is entitled to lay down policies and is empowered to refuse approval for setting U.P. Katha industry; *State of Himachal Pradesh* v. *Ganesh Wood Products*, AIR 1996 SC 149, paragraphs 24, 26.

Council of Ministers

163. Council of Ministers to aid and advise Governor.—(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Notes on Article 163

Where an entry in the State list, is expressly made subject to Parliamentary legislation (State list entry 23) the State ceases to have both legislative and executive power in respect of the matter to which the Parliamentary law relates; *Bharat Coal* v. *State of Bihar*, (1990) 4 SCC 557.

Governor and the Cabinet

The Governor is required to act in his discretion in the following cases:—

(a) the powers of the Governor of Assam under paragraph 9 of the 6th Schedule;

(b) the functions of a Governor appointed to be administrator of a Union Territory, under article 239(2);

(c) the functions under articles 371(2), 371 A (1) (b); 371 C (1); 371 F (g).

In other cases the Governor is to act on the advice of ministers.

(i) *Kapoor* v. *State of Punjab*, (1955) 1 SCR 577, 587.

(ii) *Sanjeevi* v. *State of Madras*, (1970) II SC 672 677.

The function of hearing appeal against Public Service Commission is also to be exercised on cabinet advice; *U.P.P.S.C.* v. *Suresh*, AIR 1987 SC 1953.

Because of its very nature, the report of the Governor, under article 356 (1), cannot be given on the advice of the Council of Ministers when such a report may lead to the fall of that body.

Existing Ministry to continue

A Council of Ministers must always exist to advise the Governor, (even after dissolution of the Legislature or resignation of a Council of Ministers). Hence, the existing ministry may continue in the office until its successor assumes charge of office; *Rao* v. *Indira*, AIR 1971 SC 1002.

Classification of orders

The orders passed by the Governor of a State (article 163) fall in four broad categories:

(i) The exercise of executive power in accordance with the provisions of the Constitution, by or under the order of the Governor, wherein full judicial review is available;

(ii) Orders passed by the Governor, on the aid and advice of the Council of Ministers headed by the Chief Minister, wherein full judicial review is available;

(iii) Orders like the grant of pardon under article 161 and the orders passed by the President on the report submitted by the Governor under article 356, on account of which limited judicial review is available; and

(iv) Where the Governor acts without the aid and advice of the Council of Ministers (headed by the Chief Minister) and acts in his own discretion. (Here no judicial review is permissible).

Pratap Singh Rane v. *Government of Goa*, AIR 1999 Bom 53, 91, paragraphs 29, 36 (DB).

164. Other provisions as to Ministers.—(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the State of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

The Advocate-General for the State

165. Advocate-General for the State.—(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

Notes on Article 165

While ordinarily a concession made by a Government pleader in a trial court does not bind the Government unless it is in writing on instruction from a responsible officer, that principle would not apply to a concession made by the Advocate-General because he is assumed to make a statement with responsibility; *Periyar* v. *State of Kerala*, AIR 1990 SC 2192, paragraph 9.

Conduct of Government Business

166. Conduct of business of the Government of a State.—(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

[1][***]

167. Duties of Chief Minister as respects the furnishing of information to Governor, *etc*.—It shall be the duty of the Chief Minister of each State—

(a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Notes on Articles 162 to 167

By article 162, the executive power of the State is made co-extensive with the legislative power of the State, as to which see article 246(2) and 246(3). This power, however, is subject to the limitation contained in the proviso to article 162. Of course, executive power cannot be so exercised as to conflict with a law. *See* the undermentioned cases:

(i) *State of Andhra Pradesh* v. *Lavu*, AIR 1971 SC 2560.

(ii) *State of Madhya Pradesh* v. *Jain*, AIR 1981 SC 2045.

Article 163 (Council of Ministers in the State) follows to a large extent article 74 (Council of Ministers in the Union), but, unlike article 74(1) as amended, article 163 does not expressly require the Governor to accept the Cabinet's advice. However, (except where the Governor is to exercise his functions in his discretion), the Governor has to accept the advice of the State Council of Ministers, as per the rulings in (i) *Sanjeevi* v. *State of Madras*, AIR 1970 SC 1102 and (ii) *U.P. Public Service Commission* v. *Suresh*, AIR 1987 SC 1953.

Article 166, though concerned primarily with conduct of business, has considerable constitutional importance. The principle that all executive action must be expressed to be taken in the Governor's name, seems to carry the implication that a decision of the Council of Ministers does not become an order of the State Government until it is sent out as the Governor's order; *State of Kerala* v. *Lakshmikutty*, AIR 1987 SC 331, paragraph 40; unless it is a purely internal matter for noting on the file; *Bachhittar* v. *State of Punjab*, AIR 1963 SC 395.

Individual officers

Governmental action is routed through individuals. Hence, they should be answerable for illegal acts. Further, a policy directed by the Minister can be examined by the court to see if it is meant for the public good or whether it fritters away public property; *Secretary Jaipur Development Authority* v. *Daulat Mal Jain*, (1997) 1 SCC 35.

---

1. Clause (4) was ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 28 (w.e.f. 3-1-1977) and omitted by the Constitution (forty-fourth Amendment) Act, 1978, sec. 23 (w.e.f. 20-6-1979).

CHAPTER III — THE STATE LEGISLATURE

General

168. Constitution of Legislatures in States.—(1) For every State there shall be a Legislature which shall consist of the Governor, and

(a) in the States of [1][***] Bihar, [2][***], [3][[4][***]] [5][Maharashtra], [6][Karnataka and [7][***] [8][and Uttar Pradesh], two houses:

(b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

169. Abolition or creation of Legislative Councils in States.—(1) Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

[9][**170. Composition of the Legislative Assemblies.**—(1) Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

(2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency

---

1. The words "Andhra Pradesh", omitted by the Andhra Pradesh Legislative Council (Abolition) Act, 1985 (34 of 1985), sec. 4 (w.e.f. 1-6-1985).
2. The word "Bombay" omitted by the Bombay Reorganisation Act, 1960 (11 of 1960), sec. 20 (w.e.f. 1-5-1960).
3. No date has been appointed under sec. 8(2) of the Constitution (Seventh Amendment) Act, 1956 for the insertion of the words "Madhya Pradesh" in this sub-clause.
4. The words "Tamil Nadu", omitted by the Tamil Nadu Legislative Council (Abolition) Act, 1986 (40 of 1986) sec. 4 (w.e.f. 1-11-1986).
5. Ins. by the Bombay Reorganisation Act, 1960 (11 of 1960), sec. 20 (w.e.f. 1-5-1960).
6. Subs. by the Mysore State (Alteration of Name) Act, 1973 (31 of 1973), sec. 4, for "Mysore" (w.e.f. 1-11-1973) which was inserted by the Constitution (Seventh Amendment) Act, 1956, sec. 8(1).
7. The word, "Punjab", omitted by the Punjab Legislative Council (Abolition) Act, 1969 (46 of 1969), sec. 4 (w.e.f. 7-1-1970).
8. Subs. by the West Bengal Legislative Council (Abolition) Act, 1969 (20 of 1969), sec. 4, for "Uttar Pradesh and West Bengal" (w.e.f. 1-8-1969).
9. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 9 for article 170.

and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

[1][*Explanation.*—In this clause, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.]

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:]

[2][Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly:

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the Legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the total number of seats in the Legislative Assembly of each State and the division of such State into territorial constituencies under this clause.]

171. Composition of the Legislative Councils.—(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed [3][one-third] of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a

---

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 29, for the *Explanation* (w.e.f. 3-1-1977).
2. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 29 (w.e.f. 3-1-1977).
3. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 10, for "one-fourth".

of the first session of each year], the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address [1][***].

177. Rights of Ministers and Advocate-General as respects the Houses.—Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Officers of the State Legislature

178. The Speaker and Deputy Speaker of the Legislative Assembly.—Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speakers thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

179. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.—A member holding office as Speaker or Deputy Speaker of an Assembly—

(a) shall vacate his office if he ceases to be a member of the Assembly;

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the Assembly passed by a majority of all then members of the Assembly:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

180. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.—(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

---

1. The words "and for the precedence of such discussion over other business of the House" omitted by the Constitution (First Amendment) Act, 1951, sec. 9.

181. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 180 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an quality of votes.

182. The Chairman and Deputy Chairman of the Legislative Council.—The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

183. Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.—A member holding office as Chairman or Deputy Chairman of a Legislative Council—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office; and

(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

184. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.—(1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is also vacant, by such member of the Council as the Governor may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

185. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the Legislative Council, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 184 shall apply in relation

of the first session of each year], the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address [1][***].

177. Rights of Ministers and Advocate-General as respects the Houses.—Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Officers of the State Legislature

178. The Speaker and Deputy Speaker of the Legislative Assembly.—Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speakers thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

179. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.—A member holding office as Speaker or Deputy Speaker of an Assembly—

(a) shall vacate his office if he ceases to be a member of the Assembly;

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the Assembly passed by a majority of all then members of the Assembly:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

180. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.—(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

---

1. The words "and for the precedence of such discussion over other business of the House" omitted by the Constitution (First Amendment) Act, 1951, sec. 9.

181. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 180 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an quality of votes.

182. The Chairman and Deputy Chairman of the Legislative Council.—The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

183. Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.—A member holding office as Chairman or Deputy Chairman of a Legislative Council—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office; and

(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

184. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.—(1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is also vacant, by such member of the Council as the Governor may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

185. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the Legislative Council, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 184 shall apply in relation

to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Council while any resolution for his removal from office is under consideration in the Council and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

186. Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.—There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly, and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by the Legislature of the State by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

187. Secretariat of State Legislature.—(1) The House or each House of the Legislature of a State shall have a separate secretarial staff:

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

188. Oath or affirmation by members.—Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

189. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.—(1) Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

(4) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

Disqualifications of Members

190. Vacation of seats.—(1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member of the Legislatures of two or more States specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules[1] made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.

(3) If a member of a House of the Legislature of a State—

(a) becomes subject to any of the disqualifications mentioned in [2][clause (1) or clause (2) of article 191]; or

[3][(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be,] his seat shall thereupon becomes vacant:

[4][Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.]

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

191. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

1. *See* the Prohibition of Simultaneous Membership Rules, 1950 published with the Ministry of Law Notification No. F, 46/50-C, dated the 26th January, 1950, Gazette of India, Extraordinary, p. 678.
2. Subs. by the Constitution (Fifty-second Amendment) Act, 1985, sec. 4, for "clause (1) of article 191" (w.e.f. 1-3-1985).
3. Subs. by the Constitution (Thirty-third Amendment) Act, 1974, sec. 3, for sub-clause (*b*).
4. Ins. by the Constitution (Thirty-third Amendment) Act, 1974, sec. 3.

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

[1][*Explanation.*—For the purposes of this clause,] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

[2][(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.]

Notes on Article 191

An 'office of profit' is an office which is capable of yielding a profit or pecuniary gain. Contrary is the case of an honorary Chairman of a Board of Election, or the office of an M.L.A.; *Ramakrishna* v. *State of Karnataka*, AIR 1993 Kant 54, paragraph 25.

Breach of oath by a member or minister is not a ground of disqualification under this article and no writ of *Quo warranto* can be issued to remove him on this ground; *Hardwari* v. *Bhajan*, AIR 1993 P&H 3, paragraphs 8, 9 and 16.

Disqualification of a member of the State Legislature was ordered by the Speaker, but the decision was by the High Court.

The Speaker disregarded the stay order. It was held that the High Court was not justified in subsequently upholding the Speaker's decision; *Ravi Naik* v. *Union of India*, JT (1994) 1 SC 551.

[3][**192. Decision on questions as to disqualifications of members.**—(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.]

Notes on Article 192

Election Commissions opinion

Where two Election Commissioners, do not reach a unanimous decision out of 'necessity' the Chief Election Commissioner has to express his opinion. Majority view would be sent to the Governor; *Election Commission* v. *Subramaniam Swamy*, AIR 1996 SC 810.

193. Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified.—If a person sits or votes as a

1. Subs. by the Constitution (Fifty-second Amendment) Act, 1985, sec. 5, for "(2) For the purposes of this article" (w.e.f. 1-3-1985).
2. Ins. by the Constitution (Fifty-second Amendment) Act, 1985, sec. 5 (w.e.f. 1-3-1985).
3. Article 192 has been successively subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 33 (w.e.f. 3-1-1977) and the Constitution (Forty-fourth Amendment) Act, 1978, sec. 25 to read as above (w.e.f. 20-6-1979).

member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

Powers, Privileges and Immunities of State Legislatures and their Members

194. Powers, privileges, *etc.*, of the House of Legislatures and of the members and committees thereof.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, [1][shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution forty-fourth Amendment) Act, 1978].

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

Notes on Article 194

The provisions of the tenth schedule, paragraph 2 are not violative of article 105(1) or 194(1); *Kihota* v. *Zachilhu*, AIR 1993 SC 412 (CB).

195. Salaries and allowances of members.—Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined, by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of the Constitution applicable in the case of members of the Legislative Assembly of the corresponding province.

Legislative Procedure

196. Provisions as to introduction and passing of Bills.—(1) Subject to the provisions of articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

---

1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 26, for certain words (w.e.f. 20-6-1979).

(2) Subject to the provisions of articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

197. Restriction on powers of Legislative Council as to Bills other than Money Bills.—(1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

(a) the Bill is rejected by the Council; or

(b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

(a) the Bill is rejected by the Council; or

(b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill.

198. Special procedure in respect of Money Bills.—(1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

199. Definition of "Money Bills".—(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;

(c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund;

(d) the appropriation of moneys out of the Consolidated Fund of the State;

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or

(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under article 198, and when it is presented to the Governor for assent under article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

200. Assent to Bills.—When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

Notes on Article 200

Governor's assent to Bills

There are four courses open to a Governor to whom a Bill passed by the State Legislature is presented for assent. The Governor—

(i) assents, or

(ii) withholds assent, or

(iii) reserves the Bill for the consideration of the President, or

(iv) returns the Bill (If not a Money Bill), for re-consideration, with his message. This is to be done "as soon as possible after the presentation" of the Bill (First Proviso).

The Governor's action in this regard has been held to be non-justifiable. *See* the undermentioned cases:

(i) *Purushotham* v. *State of Kerala*, AIR 1962 SC 694.

(ii) *Hoechst* v. *State of Bihar*, AIR 1983 SC 1019.

(iii) *Bharat Seva Ashram* v. *State of Gujarat*, AIR 1987 SC 494.

201. Bills reserved for consideration.—When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as it mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.

Procedure in Financial Matters

202. Annual financial statement.—(1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State;

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of each State—

(a) the emoluments and allowances of the Governor and other expenditure relating to his office;

(b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;

(c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) expenditure in respect of the salaries and allowances of Judges of any High Court;

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(f) any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged.

203. Procedure in Legislature with respect to estimates.—(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

204. Appropriation Bills.—(1) As soon as may be after the grants under article 203 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet—

(a) the grants so made by the Assembly; and

(b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.

(2) No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 205 and 206, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article.

205. Supplementary, additional or excess grants.—(1) The Governor shall—

(a) if the amount authorised by any law made in accordance with the provisions of article 204 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.

(2) The provisions of articles 202, 203 and 204 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant.

206. Votes on account, votes of credit and exceptional grants.—(1) Notwithstanding anything in the foregoing provisions of this Chapter, the Legislative Assembly of a State shall have power—

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 203 for the voting of such grant and the passing of the law in accordance with the provisions of article 204 in relation to that expenditure;

(b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year,

and the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of articles 203 and 204 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.

207. Special provisions as to financial Bills.—(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of

article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill.

Procedure Generally

208. Rules of procedure.—(1) A House of the Legislature of a State may make rules for regulating subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses.

209. Regulation by law of procedure in the Legislature of the State in relation to financial business.—The Legislature of a State may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State under clause (1) of article 208 or with any rule or standing order having effect in relation to the Legislature of the State under clause (2) of that article, such provision shall prevail.

210. Language to be used in the Legislature.—(1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English:

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother-tongue.

(2) Unless the Legislature of the State by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted here from:

[1][Provided that in relation to the [2][Legislatures of the States of Himachal Pradesh, Manipur, Meghalaya and Tripura] this clause shall have effect as if for the words "fifteen years" occurring therein, the words "twenty-five years" were substituted]:

[3][Provided further that in relation to the [4][Legislature of the States of [5][Arunachal Pradesh, Goa and Mizoram, this clause shall have effect as if for the words "fifteen years" occurring therein, the words "forty years" were substituted.]

211. Restriction on discussion in the Legislature.—No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

212. Courts not to inquire into proceedings of the Legislature.—(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Notes on Article 212

Scope

Article 212 precludes the court from (a) interfering with the presentation of a Bill for assent to the Governor on the ground of non-compliance with the procedure for passing Bills, or from (b) otherwise questioning Bills passed by the House. *See* the undermentioned cases:

(i) *Ramchandra* v. *Andhra Pradesh Regional Committee*, AIR 1965 AP 305.

(ii) *State of Bihar* v. *Kameshwar Singh*, AIR 1952 SC 252.

(iii) *Indira* v. *Raj Narain*, AIR 1975 SC 2299.

(iv) *Jai Singh* v. *State of Haryana*, AIR 1970 P&H 379.

Proceedings inside the legislature cannot be called into question on the ground that they have not been carried on in accordance with the rules of business; *Kihota* v. *Zachilhu*, AIR 1993 SC 412.

Defects of competence

Of course, want of legislative competence is not cured by article 212; (i) *Sharma* v. *Sri Krishna* (II), AIR 1960 SC 1186; (ii) *State* v. *Sudarsan*, AIR 1984 Ker 1.

---

1. Ins. by the State of Himachal Pradesh Act, 1970 (53 of 1970), sec. 46 (w.e.f. 25-1-1971).
2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71, for "Legislature of the State of Himachal Pradesh" (w.e.f. 21-1-1972).
3. Ins. by the State of Mizoram Act, 1986 (34 of 1986), sec. 39 (w.e.f. 20-2-1987).
4. Subs. by the State of Arunachal Pradesh Act, 1986 (69 of 1986), sec. 42, for "Legislature of the State of Mizoram" (w.e.f. 20-2-1987).
5. Subs. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987), sec. 63, for "Arunachal Pradesh and Mizoram" (w.e.f. 30-5-1987).

CHAPTER IV— LEGISLATIVE POWER OF THE GOVERNOR

213. Power of Governor to promulgate Ordinances during recess of Legislature.—(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—

(a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or

(b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or

(c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Legislature of the State assented to by the Governor, but every such Ordinance—

(a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and

(b) may be withdrawn at any time by the Governor.

Explanation.—Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.

[1][***]

1. Clause (4) was inserted by the Constitution (Thirty-eighth Amendment) Act, 1975, sec. 3 (retrospectively) and omitted by the Constitution (Forty-forth Amendment) Act, 1978, sec. 27 (w.e.f. 20-6-1979)

Notes on Article 213

See notes on article 123 (Ordinances issued by the President). The most important case on article 213 is *D.C. Wadhwa* v. *State of Bihar*, AIR 1987 SC 579. Dr. Wadhwa's book Repromulgation of Ordinances (Orient Longman, 1985) traces history of the Ordinances "making power in a comprehensive manner. Earlier decisions-such as *State of Punjab* v. *Satya Pal*, AIR 1969 SC 903. should now be read subject to *D.C. Wadhwa* v. *State of Bihar*, AIR 1987 SC 579.

An Ordinance can be challenged if the Governor—

(a) directly violated a constitutional provision, or

(b) exceeded his constitutional power to make an Ordinance, or

(c) has made a colourable use of such power (*e.g.* by successive repromulgation of an Ordinance without getting an Act of the Legislature passed to replace an expiring Ordinance) the court would strike down the Ordinance; *D.C. Wadhwa* v. *State of Bihar*, AIR 1987 SC 579, paragraphs 6-8.

CHAPTER V — THE HIGH COURTS IN THE STATES

214. High Courts for States.—[1][***]There shall be a High Court for each State.

[2][***]

215. High Courts to be courts of record.—Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Notes on Article 215

Contempt power

Jurisdiction in contempt is independent jurisdiction of original nature; *High Court of Judicature at Allahabad* v. *Raj Kishore*, AIR 1997 SC 1186.

216. Constitution of High Courts.—Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

[3][***]

217. Appointment and conditions of the office of a Judge of a High Court.—(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High court, and [4][shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of [5][sixty-two years]]:

---

1. The brackets and figure "(1)" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Clauses (2) and (3) omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
3. Proviso omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 11.
4. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 12, for "shall hold office until he attains the age of sixty years".
5. Subs. by the Constitution (Fifteenth Amendment) Act, 1963, sec. 4, for "sixty years".

Provided that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court [1][***] or of two or more such courts in succession; [2][***]

Explanation.—For the purposes of this clause—

[3][(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;]

[4][(aa) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person [5][has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law] after he became an advocate;]

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

[6][(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.]

---

1. The words "in any State specified in the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. The word "or" and sub-clause (c) were ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 36 (w.e.f. 3-1-1977) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 28 (w.e.f. 20-6-1979).
3. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 28 (w.e.f. 20-6-1979).
4. Clause (a) re-lettered as clause (aa) by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 28 (w.e.f. 20-6-1979).
5. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 36, for "has held judicial office" (w.e.f. 3-1-1977).
6. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, sec. 4 (with retrospective effect).

Notes on Article 217

Consultation (Consumer Act)

The opinion of the Chief Justice of the High Court, and the requirement of consultation with him according to the proviso in section 16(1)(a) of the Consumer Protection Act, 1986, must have the same status as that of the Chief Justice of the High Court in the appointment of a High Court Judge under article 217 of the Constitution; and the process of appointment to the office of the President of the State Commission must also be similar; *Ashish Handa* v. *Chief Justice, Punjab & Haryana High Court*, AIR 1996 SC 1308, (paragraph 3).

Appointment of judges *See* notes under article 124.

218. Application of certain provisions relating to Supreme Court to High Courts.—The provisions of clauses (4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

219. Oath or affirmation by Judges of High Courts.—Every person appointed to be a Judge of a High Court [1][***] shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

[2][**220. Restriction on practice after being a permanent Judge.**—No person who, after the commencement of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.

Explanation.—In this article, the expression "High Court" does not include a High Court for a State specified in Part B of the First Schedule as it existed before the commencement[3] of the Constitution (Seventh Amendment) Act, 1956.]

221. Salaries *etc.*, of Judges.—[4][(1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.]

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence shall be varied to his disadvantage after his appointment.

Notes on Article 221

Rights of a Chief Justice of a High Court to receive pension and other benefits, cannot be altered to his disadvantage, after his appointment; *Justice S.S. Sandhawalia* v. *Union of India*, AIR 1990 P&H 198.

222. Transfer of a Judge from one High Court to another.—(1) The President may,

---

1. The words "in a State" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 13, for article 220.
3. Ist November, 1956.
4. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986, sec. 3, for clause (1) (w.e.f. 1-4-1986).

after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court [1][***].

[2][(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.]

Notes on Article 222

In regard to transfer of judges, judicial review is necessary to check arbitrariness. But as to *locus standi*, only the judge who is transferred can challenge it; *K. Ashok Reddy* v. *Government of India*, JT (1994) 1 SC 40.

High Court cannot in case of bank service substitute its own view for the punishment imposed his disciplinary authority. The Supreme Court can increase the euqitable jurisdiction under article 136; *State Bank of India* v. *Samarandra Kishore*, JT (1994) 1 SC 217.

223. Appointment of acting Chief Justice.—When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the court as the President may appoint for the purposes.

[3]**[224. Appointment of additional and acting Judges.**—(1) If by reason of any temporary increase in the business of High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specific.

(2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.

(3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of [4][sixty-two years.]]

[5]**[224A. Appointment of retired Judges at sittings of High Courts.**—Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.

---

1. The words "within the territory of India" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 14.
2. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, sec. 5. Original clause (2) was omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 14.
3. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 15, for article 224.
4. Subs. by the Constitution (Fifteenth Amendment) Act, 1963, sec. 6, for "sixty years".
5. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, sec. 7.

225. Jurisdiction of existing High Courts.—Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution :

[1][Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.]

Notes on Article 225

A High Court Judge's power to hear specified class of cases is derived only from the application of business by the Chief justice. A case not covered by such allocation cannot be heard by a judge sitting singly or in Division Bench (History of Calcutta High Court's jurisdiction traced). The power of the Chief Justice to allocate business is (a) not only derived from section 108(2), Government of India Act, 1915 (which still subsists by virtue of section 223, Government of India Act, 1935 and article 225 of the Constitution) but (b) is also inherent in the Chief Justice; *Pramatha Nath Talukdar* v. *Saroj Ranjan Sarkar*, AIR 1962 SC 876 and *State* v. *Devi Dayal*, AIR 1959 All 421, 423 cited.); *Sohal Lal* v. *State of West Bengal*, AIR 1990 Cal 168 (DB).

[2][**226. Power of High Courts to issue certain writs.**—(1) Notwithstanding anything in article 32 [3][***] every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [4][writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*], or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

---

1. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 29, (w.e.f. 20-6-1979). Original proviso was omitted by the Constitution (Forty-second Amendment) Act, 1976, sec. 37 (w.e.f. 1-2-1977).
2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 38, for article 226 (w.e.f. 1-2-1977).
3. The words, figures and letters "but subject to the provisions of article 131A and article 226A" omitted by the Constitution (Forty-third Amendment) Act, 1977, sec. 7 (w.e.f. 13-4-1978).
4. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 30, for certain words (w.e.f. 1-8-1979).

[1][(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]

[2][(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.]

Notes on Article 226

Scope: High Court power

The power of the High Court to issue writs under article 226 is wider than that of the Supreme Court. It is not confined to fundamental rights, but extends to all cases where the breach of a right is alleged. *See* notes on article 32. The writ may be issued for the enforcement of fundamental rights of for "any other purpose"; *State of Orissa* v. *Madangopal*, (1952) SCR 28. Of course, there must be violation of a right; *Calcutta Gas Co.* v. *State of West Bengal*, AIR 1962 SC 1044.

The scope of the power to enforce fundamental right (under article 32 or 226) is *both* protective and remedial. Hence, to reject such petition on the simple ground that it cannot be entertained because of a rule of practice of the court cannot be justified; *Kiran* v. *Government of Andhra Pradesh*, (1990) 1 SCJ 282, paragraphs 13-15 and 20.

Court will not permit this extraordinary jurisdiction to be coverted into a suit or a criminal proceeding under the ordinary law.

A declaration of title to property; *State of Rajasthan* v. *Bhawani*, (1993) Supp (1) SCC 306, paragraph 7.

The High Court, under article 226, cannot sit as an appellate court on administrative decisions. It cannot interfere in the absence of illegality, unconstitutionality, want of jurisdiction or *mala fides*; *P.C.H.S.* v. *State of Maharashtra*, AIR 1991 SC 1453, paragraph 5.

It is primarily for the Government to strike a just balance between two competing objectives. The court's role is restricted to examine whether Government has taken into account all relevant aspects, and can interfere only where the Government has overlooked any material considerations or is influenced by extraneous or immaterial considerations; *Dahanau* v. *B.S.E.S.*, (1991) 2 SCC 539, paragraphs 2 and 3.

---

1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 30, for clauses (3), (4), (5) and (6) (w.e.f. 1-8-1979).
2. Clause (7) renumbered as clause (4) by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 30 (w.e.f. 1-8-1979).

Certiorari and Prohibition

The grounds for issuing *certiorari* and *prohibition* are as under:

1. Defect of jurisdiction

(a) Defect of jurisdiction attracts *certiorari*. But *certiorari* would not lie, merely because the decision of a tribunal on a subject-matter within its jurisdiction is considered to be wrong. *See* the undermentioned cases:—

(i) *Basappa* v. *Nagappa*, (1955) 1 SCR 250, 257-258.

(ii) *Syed Yakoob* v. *Radhakrishnan*, AIR 1964 SC 477.

Illustrations

(1) The State Government leased out some forest land to appellants to collect and exploit sal seeds for 15 years on payment of royalty at a certain rate and when the State, under the terms of leases, revised the rate of royalty and thereafter cancelled the leases for the breach of certain conditions, the appellants challenged the orders of revision of rate and cancellation of leases as illegal by writ proceedings under Act 226. Held that the contract did not contain any statutory terms or obligations and no statutory power or obligation which could attract the application of article 14 was involved; *Radhakrishna Agarwal* v. *State of Bihar*, AIR 1977 SC 1496.

(2) Clause 7(2) of the Sugar Control Order, 1966, requires the Government to fix the price "having regard to the estimated cost of production of sugar on the basis of the relevant schedule". The expression "having regard to" only obliges the Government to consider as relevant data material to which it must have regard. It is evident that the price fixed is an estimated maximum price chargeable because the manufacturer cannot charge more. Furthermore, it should be noted that the only "adjustment" provided for is before a fixation of the estimated price "having regard" to the basis provided by the relevant schedule, but there is no obligation whatsoever cast upon the Government to make any "adjustment" to compensate for losses due to any previous erroneous fixation; *Saraswati Industrial Syndicate Ltd.* v. *Union of India*, AIR 1975 SC 460.

(3) The courts have no jurisdiction under article 226 to go into reasonableness of Telephone Tariff Rates. These rates are decided as policy matter in fiscal planning. There is legislative prescription of rates. Rates are a matter for legislative judgment and not for judicial determination; *S. Narayana Iyer* v. *Union of India*, AIR 1976 SC 1986.

(4) A notification issued under section 3 of the U.P. Town Areas Act, 1914, which has the effect of making the Act Applicable to a geographical area is in the nature of a conditional legislation and it cannot be characterised as a piece of subordinate legislation. Therefore, it is not necessary for the State Government to follow the same procedure which is applicable to the promulgation of rules under section 39 of the Act; *The Tulsipur Sugar Co. Ltd.* v. *The Notified Area Committee, Tulsipur*, AIR 1980 SC 882.

(5) Principles of natural justice are not inflexible and may differ in different circumstances. When a proper inquiry is held by an inquiry committee consisting of three respectable and independent members of the staff as appointed by the principal of a Medical College to inquire into the complaints of the inmates of the girls hostel against certain male students of that college about their indecent behaviour with them in hostel compound itself during odd hours of night, in such case, the rules of natural justice do not require that statement of girl students should be recorded in presence of the male students concerned; *Hira Nath Mishra* v. *The Principal, Rajendra Medical College, Ranchi*, AIR 1971 SC 1260.

(6) A writ of *certiorari* can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ can be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the

procedure adopted in dealing with the dispute is opposed to principles of natural justice; *Syed Yakoob* v. *Radhakrishnan*, AIR 1964 SC 477.

(b) *certiorari* will issue if, there is an error of law *apparent* on the face of the record, (as stated above) or if the tribunal acts without sufficient evidence or misdirects itself in considering the evidence.

(c) defect of jurisdiction must be distinguished from error or irregularity in *procedure*. The reason is that—

"In granting ..... *certiorari* the superior court does not review or rewigh the evidence upon which the determination of the inferior Tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal".

(d) the writ of *certiorari* does not issue to correct a mere erroneous decision; *R.* v. *Middlesex II*, (1952) 2 All ER 312 or irregularity in procedure (except where the error is one of law which is "apparent on the face of the record" or constitutes a denial of natural justice).

(i) *R.* v. *Northumberland Compensation Tribunal*, (1952) 1 KB 338, 357.

(ii) *R.* v. *Middlesex II*, (1952) 2 All ER 312.

Object of *certiorari* is to get rid of a decision which is vitiated by a defect or jurisdiction or a denial of the basic principles of justice—not to substitute a right determination for a wrong one; *R.* v. *Northumberland Compensation Tribunal*, (1952) 1 KB 338, 357.

2. Non-observance of the rules of natural justice

(a) An administrative body vested with quasi judicial power is not bound to follow the rules of *judicial procedure*, such as to examine witnesses or even to hear the parties orally.

(i) *Board of Education* v. *Rice*, (1911) AC 179

(ii) *Local Govt. Board* v. *Arlidge*, (1951) SC 120, 132.

(b) But there is a minimum standard to be observed "by any one who decides anything"; *Board of Education* v. *Rice*, (1911) AC 179.

The authority competent to decide must "act in good faith and fairly listen to both sides", and "deal with the question referred to it without bias, and give to each of the parties the opportunity of adequately presenting the case made."

(i) *Board of Education* v. *Rice*, (1911) AC 179.

(ii) *Local Govt. Board* v. *Arlidge*, (1915) AC 120, 132.

(c) The requirements of natural justice vary with the varying Constitution of the different *quasi judicial* authorities and the statutory provisions under which they function.

Hence, the question whether or not any rule of natural justice has been contravened in any particular case should be decided not under any preconceived notions, but in the light of the relevant statutory provisions, the Constitution of the tribunal and circumstances of each case.

(i) *N.P.T. Co.* v. *N.S.T. Co.*, (1957) SCR 98.

(ii) *Union of India* v. *P.K. Roy*, AIR 1968 SC 850, 858.

(iii) *Suresh* v. *University of Kerala*, AIR 1961 SC 198.

3. Errors of law apparent on the face of the record

This means, (i) error of law, (ii) which *apparent* form the record, and (iii) which does not require to be established by evidence comparatively recent decisions in England and India lay down above.

(i) *R.* v. *Northumberland Compensation Tribunal*, (1952) 1 KB 338, 357.

(ii) *Basappa* v. *Nagappa*, (1955) 1 SCR 250, 258.

(iii) *Ambica Mills* v. *Bhatt*, AIR 1961 SC 970, 973.

When it is an error of *law*, and it is apparent, *certiorari* will issue even though the tribunal has not transgressed its "jurisdiction" in any way.

Error in this context means an "error of law", which is apparent.

(i) Where the tribunal stated on the face of the order the grounds on which it made the order and in law these grounds were not such as to warrant the decision to which the tribunal had come, *certiorari* would issue to quash the decision; *P.T. Services* v. *S.I. Court*, AIR 1963 SC 114.

(ii) Where the order cites the provision of law relied upon, but the facts stated do not warrant its application, certiorari would issue; *Collector of Customs* v. *Pednekar*, AIR 1976 SC 1408, paragraphs 22, 24.

Acquiescence

Minor violations of the rules of procedures will be no ground for interference where the petitioner has participated in the trial and no prejudice has been caused to him in defence. *Sodhi* v. *Union of India*, (1991) 2 SCC 382, paragraph 35.

Allotment of land

A Housing Society sought (through writ petition) a direction to the Government to allot certain land in respect of which the Development Authority had passed a resolution. However, it was found that no order of allotment had been communicated to the petitioner society, nor had Government approval been granted. Petition was dismissed; *Vijaynagar Industrial Workers, Housing Co-operative Society* v. *State of Karnataka*, AIR 1998 Karn 361.

Alternate remedy

The possibility of having certain remedies has not been considered as alternative remedies for refusing relief under article 226, on the ground that these are not alternative specific legal remedies, but discretionary remedies which are granted in extraordinary circumstances, *e.g.*, appeal by special leave under article 136, departmental instructions; *Shyam* v. *Municipal Corporation*, (1993) 1 SCC 22, paragraph 45 (3 Judges).

Where an appeal under article 136 will be to the Supreme Court from an order of a statutory tribunal, on the ground of absence or excess of jurisdiction article 226 may not be appropriate; *State of Tamil Nadu* v. *State of Karnataka*, (1991) 2 UJSC 134, paragraph 33 (3 Judges).

A petition challenging the recovery of certain amount as revenue arrears, on the ground that the certificate was not legally valid, cannot be dismissed on the ground of existence of alternative remedy. Where the petition is not furvolous, vexations or *prima facie* unjust; *Prem Chandra* v. *Collector Faridabad*, AIR 1998 SCC 359.

Amenability

Even though a writ would not issue against a non-statutory private body, it should lie against such body when it receives grant from Government and is subject to regulation made by the Government, or against the order of a Government Officer even though it is in relation to the private institution; *Francis John* v. *The Director of Education*, AIR 1990 SC 423, paragraphs 8-9.

Arbitrariness

Emphasis is now being placed on the need to avoid arbitrariness by administrative authority even in spheres where the relevant statute does not lay down any *quasi judicial* obligation; *Union of India.* v. *Nambudri*, (1991) 2 UJSC 303, paragraph 7.

Arrest

A person was arrested under the Terrorists Act and the designated court refused bail. It was held that the High Court in writ jurisdiction could not examine the correctness of the view of the

designated court to quash the presentation of the accused; *State of Maharashtra* v. *Abdul Hamid Kajo Mohammed*, JT (1994) 2 SC 1.

Bail

Although the High Court has jurisdiction to entertain prayer for bail in writ jurisdiction, yet, such jurisdiction should be exercised sparingly having regard to judicial discipline and *comity* of courts; *Kartar Singh* v. *State of Punjab*, JT (1994) 2 SC 423.

Bias

When no other person is available to discharge an adjudicatory function, even a person who is disqualified on account of bias may be allowed to function, without the risk of violating natural justice. This doctrine also applies where no quorum can be formed without the disqualified member or where all the members of a tribunal are disqualified; *Charan* v. *Union of India*, (1990) 1 SCC 613, paragraphs 75 and 105 (C.B.).

The main witnesses of an alleged incident of misbehaviour by a student were Professors of the College. They were members of the Inquiry Committee and also members of the Disciplinary Committee. The Principal passed restriction order on the basis of the report of the above Committee. It was held that the decision was vitiated on the ground of bias; *Bhupendra Kumar Singhal* v. *P.R. Mehta*, AIR 1990 Guj 48 (Reviews case law).

Certiorari

In India, certiorari would be available even against administrative bodies, not having any *quasi judicial* obligation, if they *affect* rights of individuals without conforming to the principles of 'fair play'; *Union of India* v. *Nambudri*, (1991) 2 UJSC 303, paragraph 9.

Civil consequence

No civil consequence, so as to require an obligation to hear the person to be affected, takes place where such person had no legal right of which he is a mere privilege or concession; *A.S.C.* v. *A.P.S.E.B.*, (1991) 3 SCC 263, paragraph 15.

An instance of civil consequences, is taking away of vested rights, *e.g.*, the removal of an employee's name from a 'select list' for promotion; *Union of India* v. *Nambudri*, (1991) 2 UJSC 303, paragraph 7.

An instance of civil consequences, is the taking away of vested rights, *e.g.*, termination of any employment governed by statute; *Shridhar* v. *Nagar Palika*, (1990) 1 SCJ 383, paragraphs 7-8.

An instance of civil consequences, is imposing any penalty upon an employee, for misconduct, *e.g.*, making an adverse entry in his service record; *State of Maharashtra* v. *Ravi Kant*, (1991) 2 UJSC 188.

No civil consequence, so as to require an obligation to hear the person to be affected, take place where such person had no legal right of which he is going to be deprived, *e.g.*, economical loss caused by the transfer of a Government employee, except where the conditions of his employment indicate that he cannot be transferred without his consent; *Shankar* v. *Vice Admiral*, (1991) 3 SCC 263, paragraph 15.

Even an administrative order must be made in conformity with the rules of natural justice, if it involves civil consequences, or if it affects any right of citizen which is capable of being enforced by a legal action, including even procedural rights; *Union of India* v. *Amrik*, (1991) 1 UJSC 654, paragraph 4.

Code of Civil Procedure

Certain High Courts have framed Rules attracting the application of the provisions of the Code of Civil Procedure to proceedings under article 226, in matters on which the rules are silent, and in these High Courts it has been held that even after 1976, the provisions of the Code will apply to writ proceedings in so far as they are not inconsistent with the rules, *e.g.* the principle under *Explanation IV* to section 11.

Compensation

In a Madras case, the police entered the premises of a Devasthanam illegally, and prepared non-vegetarian food. The petitioner, who was managing trustee of the temple, sought *mandamus*, directing the police officers to vacate the premises. During the pendency of the proceedings, the police vacated the premises. The writ petition, therefore, became infructuous. But a sum of Rs. 2,000 was ordered to be paid as costs to the petitioner, having regard to the illegality committed by the police; *K.T. Chettiar* v. *Collector, Tiruvanna Mala*, AIR 1990 Mad 181, 183, paragraph 8.

Concession - Withdrawal

Concession on tariff can be withdrawn without giving opportunity of hearing to consumers, except where promissory estoppel applies; *Andhra Steel* v. *A.P.S.E.B.*, (1991) 3 SCC 263 paragraph 15.

Consumer Disputes Redressal Commission

Where the State Consumer Disputes Redressal Commission exercises jurisdiction not conferred by law (*e.g.* entertaining a complaint made by a *seller* of goods) the High Court can quash the order; *Larson & Toubro Ltd.* v. *State Consumer Disputes Redressal Commission*, AIR 1998 Cal 313.

Contract

In the realm of contract interference through writ jurisdiction is not proper, particularly when no unfairness is alleged. For this purpose "contract" means arbitration clause; *Union of India* v. *Graphic Industries*, JT (1994) 5 SC 237.

Even in the case of a contract by the Government as a public utility undertaking, the court cannot interfere with the *terms* of the contract unless they are discriminatory, unreasonable or capricious (in which case article 14 of the Constitution comes into play); *O.N.G.C.* v. *Association of N.G.C. Industries of Gujarat*, AIR 1990 SC 1851.

Where it is not a case of breach of a concluded contract, but the statutory authority has refused to renew a contract with a long standing dealer on the basis of a change made in its policy without taking the dealer into confidence, the court may interfere on the ground of a*rbitrariness; Mahabir Auto* v. *I.O.C.*, AIR 1990 SC 1031, 1039.

The court may interfere under article 226 where though the cause of action pertains to contract, there is some other feature which brings the cause within the sphere of public law, *i.e.*, because of the exercise by the State of its sovereign power apart from contract; *Mahajan* v. *J.M.C.*, (1991) 3 SCC 91 paragraph 46.

Co-operative Societies

Co-operative society is subject to writ jurisdiction—

(i) If it can be classified as a State, or

(ii) if it has a statutory public duty towards the petitioner.

Bye-laws of such a society are not "law". They are contracts between the society and its

members or employees. But in case of termination of service, section 47 of the Andhra Pradesh Shops and Establishments Act provides a certain protection. As it is based on public policy, it will be enforced in an appropriate case, by writ.

Court martial

Mandamus will issue to prevent courts-martial from exceeding their jurisdiction, but not to interfere with their proper jurisdiction, *e.g.*, on issues of military discipline, except in case of error of law; *Ranvir* v. *Union of India*, (1991) Cri LJ 1729 (Bom), paragraph 9

The Supreme Court under article 32 and a High Court under article 226 can interfere with proceedings before a court-martial and grant appropriate relief where the impugned order has resulted in denial of fundamental rights of the party aggrieved; *Mukherjee* v. *Union of India*, (1990) 3 SCJ 193, paragraph 4.

Writ court can interfere with proceedings before a court-martial and grant appropriate relief where the sentence awarded by the court-martial is disproportionate to the offence committed, thereby violating article 14 of the Constitution; *Ex-Naik* v. *Union of India*, (1991) 2 UJSC 466, paragraph 6.

Criminal investigation

While the court should not normally interfere with criminal investigation, it may prohibit the continuance of a criminal proceeding at any stage before its conclusion, in extraordinary cases, *e.g.*, where the proceeding was launched by a person who was not competent to make the F.I.R. or to institute prosecution under the relevant law; *State of Haryana* v. *Bhajan*, (1991) 2 SCJ 351, paragraph 144.

Discretion

The exercise of a statutory power must not be *ultra vires*. Thus, the discretion must be exercised in furtherance of accomplishment of the purpose for which it had been conferred. Thus, in the case of a public utility organisation, it must be exercised having regard to the consideration of the efficiency of the public service, within the limits of its resources; *U.P.S.R.T.C.* v. *Mohammed Ismail*, (1991) 3 SCC 239, paragraph 15.

A writ court cannot direct a civil court to act in a particular direction, as held by the High Court of Andhra Pradesh in *Nagarjuna University* v. *Anthony Educational Society*, AIR 1998 AP 271 (DB). In this case, a University had refused to affiliate a college. The High Court held that the role of the Judiciary is very limited in such matters. The University has its due mechanism, with which the court cannot interfere. The law court cannot act as superintendent of an educational institution. In the writ court (single Judge) had directed the trial court to dispose of the suit within 6 months. It had further directed that a certain group shall not take unnecessary adjournments. The Appeal Court held, that such directions are illegal and unjustified.

Where a discriminatory Rule fixing different age for retirement of employees belonging to the same class has been struck down by a court, those who had been wrongly retired at the lower age (say, 58) shall not be entitled to claim salary for the period intervening the higher age (say, 60) during which they did not actually render any service; nevertheless, their pension should be re-fixed by extending (by fiction) their retirement by the intervening period (*i.e.* 2 years) in the given case; *Nand* v. *State of Orissa*, AIR 1991 SC 1724.

Discrimination

An extra payment made to those who were willing to go on transfer to a remote place cannot be challenged as discriminatory by those who were not willing to go to that place; *R.A.I.* v. *R.B.I. Staff*, (1991) 2 UJSC 546, paragraph 3.

Domestic inquiry

In a domestic inquiry, the principles of natural justice must be observed. Where there were allegations of acceptance of illegal bets by a runner employed by the petitioner, the licence cannot be cancelled, merely on the statement of one employees, without calling the employee for cross-examination; *Gandhi & Co.* v. *State of Maharashtra*, AIR 1990 Bom 218.

Education-Medical Colleges

Where, for admission to a medical college certain seats are reserved for the Central Board of Secondary Education, and the Board does not sponsor the candidates so that the seats remain vacant, the seats must be filled from the waiting list. The University cannot say that it has a discretion not to fill the seats.

Making of a provision in the prospectus casts a legal duty on the University to give admission to the students who otherwise fulfil the qualifications. It was further held that the petitioners should not suffer for late admission and that shortage of lectures must be condoned by the University or the college; *Sumedha Kalia* v. *State of Haryana*, AIR 1990 P&H 239.

Petitioner was wrongly denied admission to M.S. General Surgery. Though 2 years had passed, he could not get relief. His representation was still pending. Court gave direction to admit the petitioner to M.S. Surgery; *Dwijendra Nath* v. *Director of Medical Education, Uttar Pradesh*, AIR 1990 All 131.

For admission to medical college, seats were reserved for Scheduled Tribes. Petitioner was described as Scheduled Tribe in Birth Register. Her father (a Government servant) was a member of Scheduled Tribe. It was held, that her application could not be rejected on flimsy grounds; *Mythili* v. *T. Padnia, Andhra Pradesh University of Health Service*, AIR 1990 NOC 113 (AP): (1989) 2 APLJ 288 (HC).

For admission test to medical course, "Multiple choice" type objective questions were set. Petitioner challenged the key answers. It was held that the burden lay on her to prove that the key answers were wrong (On the facts, the key answers were held to be correct); *Anjali Saxena* v. *Chairman, Professional Examination Board*, AIR 1990 MP 253 (DB).

In the case of admission to medical institutions, the rule may be departed from in filling up vacant seats in view of the dearth of qualified doctors in this country. The court would not disturb any practical step adopted by the authorities to tide over a transitional difficulty; *Principal* v. *Vandana*, AIR 1991 SC 792, paragraph 9.

Facts

In general, a disputed question of fact is *not* investigated in a proceeding under article 226, particularly where an alternative remedy is available, *e.g.*, the merits of rival claims to property or a disputed question of title; *State of Rajasthan* v. *Bhawani*, (1993) Supp (1) SCC 306, paragraph 7.

The High Court may interfere with a finding of fact, if it is shown that the finding is not supported by any evidence, or that the finding is 'perverse' or based upon a view of facts which could never be reasonably entertained; *Arjun* v. *Jamnadas*, (1990) 1 SCJ 59, paragraph 15.

A finding based on *no evidence* constitutes an error of law, but an error in appreciation of evidence or in drawing inferences is not, except where it is perverse, that is to say, such a conclusion as no person properly instructed in law could have reached, or it is based on evidence which is legally inadmissible; *Board of Wakfs* v. *Hadi*, (1993) Supp 1 SCC 192. paragraph 17.

If the conclusion on facts is supported by evidence on record, no interference is called for even though the court considers that another view is possible; *Maharashtra S.B.S.E.* v. *Gandhi*, (1991) 2 SCC 716, paragraph 10.

Encroachment and natural justice

Where the encroachment upon public property is recent then natural justice need not be observed; *Ahmedabad Municipal Corporation* v. *Nawab Khan*, AIR 1997 SC 152.

Enforcement of an Act

Mandamus cannot be issued to seek from the court a direction to the executive to bring into force an enactment. In such a case, there is no duty as such, imposed on the executive to bring the enactment into force.

See the undermentioned cases:

(i) *A.K. Roy* v. *Union of India*, AIR 1982 SC 710.

(ii) *Vasudev Shenoy* v. *Government of India*, (1994) 1 KLT 389, 390.

(iii) *State of Jammu & Kashmir* v. *A.R. Zakki*, AIR 1992 SC 1456.

Factual inaccuracy

A writ petition cannot succeed, if its factual basis is not established. In a Calcutta case, the petitioner sought inspection of his answer scripts at a particular examination on the ground that he had reason to believe that his answer scripts were missing. However, existence of the answer scripts was proved from the order of the controller of Examinations. It was held that writ could not be issued; *Vikramjit Saha* v. *State of West Bengal*, AIR 1998 Cal 316 (DB).

Fairness

The requirement of 'fairness' implies that even an administrative authority must not act arbitrarily or capriciously and must not come to a conclusion which is perverse or is such that no reasonable body of persons properly informed could arrive at; *Nally* v. *State of Bihar*, (1990) 2 SCC 48, paragraphs 13-15, 19.

Once the test of 'fairness' is substituted for a 'hearing' in this area of administrative decisions, it would follow that it cannot require that much of hearing when a person is charged with some offence or misconduct. Notice of the penalty sought to be imposed with an opportunity for making a representation and consideration of that representation in a fair and just manner, would suffice.

Where the administrative function is statutory the court must read into the statute the requirement of *fairness*, which means the minimum principles of natural justice; *Union of India* v. *Nambudri*, (1991) 2 UJSC 303, paragraph 9.

Fraud

Where a person has obtained an order from the High Court by fraud or false representation, that order as well as all advantages obtained thereunder shall be cancelled. Natural justice is not attracted to such a case; *U.P. Junior Doctors* v. *Nandwani*, AIR 1991 SC 909, paragraph 5.

A petition filed by the party aggrieved cannot be thrown out on the ground of forgery and fraud, merely because there was a *bona fide* mistake in stating the name of the petitioner in a petition drafted by another person; *Ruqmani* v. *Achuthan*, (1991) Supp 1 SCC 520, paragraph 7.

Futile writ

Writ will not be granted if, to grant it would be futile. *See* the undermentioned cases:

(i) *Rashbihari* v. *State of Orissa*, AIR 1969 SC 1082, 1088.

(ii) *Guruswami* v. *State of Mysore*, AIR 1954 SC 892.

(iii) *Nandkishore* v. *State of Rajasthan*, AIR 1965 SC 1992, 1994.

Geographical limits

On a combined reading of clauses (1) and (2) of article 226, one can say that writ can be issued against a Government, person or authority if—

(a) its seat is within the High Court's jurisdiction, or

(b) the cause of action has arisen, wholly or in part, within the High Court's jurisdiction.

Habeas Corpus

The Constitution of India mentions the writ of *habeas corpus* in articles 32 and 226. The writ ordinarily issued is *habeas corpus, ad subjiciendum*, whose object is to secure the release of a person found to be detained illegally. There are also other species of writs, going under the wider fabric of *habeas corpus*.

The various writs are as under:

(a) *Habeas Corpus ad deliberandum et recipiendum*. A writ used to remove a person confined in one place for trial to another place in which the *offence* is alleged to have been committed.

(b) *Habeas Corpus ad faciendum et recipiendum* (also called, *habeas corpus cum causa)*. A writ issued in a civil case to remove the case from the trial court to a superior court (having jurisdiction), for disposal.

(c) *Habeas Corpus ad presequendum*. This writ is issued by a court, when it is necessary to bring before the issuing court, for trial, a person who is confined for some other offence.

(d) *Habeas Corpus ad respondendum*. A writ employed in civil cases to remove a person out of the custody or one court into that of another, in order that he may be sued in the latter court and answer the action in that court.

(e) *Habeas Corpus ad satisfaciendum*. A writ which issues when the prisoner has had judgment (in a civil case), against him, in an action and the plaintiff is desirous of bringing him up before a superior court to charge him with the process of execution.

(f) *Habeas Corpus ad subjiciendum*. A writ directed to the person detaining another in his custody and commanding him to produce, before the issuing court, the person so detained. This is the most common form of the writ. Its object is to test the legality of detention of a person and to secure his release if the detention is found to be illegal. Backstone called it "the most celebrated writ in the English law and the great and efficacious writ in all manner of illegal confinement".

[Blackstones Commentaries (29)].

(g) *Habeas Corpus ad testificandum* ("You produce the body for testifying"). The writ is used to bring up a prisoner detained in Jail or prison, to give evidence before the issuing court. [Black law Dictionary (1990) pages 709, 710].

History of the writ is also traced in *Kanu Sanyal* v. *District Magistrate*, AIR 1973 SC 2684.

Generally, the writ of *habeas corpus* is applied for, only after a person has been arrested. However, in exceptional cases, it may be granted even when detention is threatened, (and not yet carried out); *Additional Secretary* v. *Alka Subhash Gadia*, (1990) 2 Scale 1352.

The exceptional cases in which *threatened* detention may give rise to the writ, are where the court is satisfied about one of the following circumstances:—

(a) the order of detention is not passed under the act under which it purports to be passed;

(b) it is passed against a wrong person;

(c) it is passed for a wrong purpose;

(d) it is passed on vague, extraneous and irrelevant grounds;

(e) the officer purporting to pass the order has no authority, in law, to make the order.

Additional Secretary v. *Alka Subhash Gadia*, (1990) 2 Scale 1352.

According to the Gujarat High Court, where the detention order has not been served and there has been no detention, then *mandamus* is the proper remedy; *Ved Prakash Deokinandan Chirpal* v. *State of Gujarat*, AIR 1987 Guj 253, 254 (FB.).

Habeas corpus is granted, only if the detention is illegal. Principal grounds for challenging the legality of detention are as under:

(a) The law under which the detention order has been issued, is invalid.

(b) The order under which detention has been ordered, is invalid.

(c) Detention is not in compliance with the law mentioned at (a) above or (b) above. This defect may arise (for example) where the law prescribes certain limits of as to period, procedure, *etc.*, which have not been observed or where the officer ordering detention is not competent under the law.

(i) *Durgadas* v. *Empl.*, AIR 1979 All 148 (FB).

(ii) *Tilak Raj* v. *Reg.*, AIR 1979 All 28.

(d) The detention itself is not in conformity with the order mentioned at (b) above.

(e) The order of detention is *mala fide*.

Vimlabai Deshpande v. *Emp.*, AIR 1945 Nag 8.

(f) The order of detention is based on irrelevant or extraneous considerations.

Machindra v. *King*, AIR 1950 FC 129.

(g) The order is passed without application of the mind

(i) *Emperor* v. *Sibnath Banerjee*, AIR 1943 FC 75, affirmed in;

(ii) *Emperor* v. *Sibnath*, AIR 1946 PC 158.

(iii) *Kishore Mohan* v. *State of West Bengal*, AIR 1972 SC 1749.

Illegal order

Writ will not be issued if the effect of issuing a writ would be to sustain or restore an illegal order; *Venkateswara* v. *Government of Andhra Pradesh*, AIR 1966 SC 828.

Equality clause cannot be invoked to perpetuate an illegal order; *State of Haryana* v. *Ram Kumar*, JT (1997) 8 SC 171.

Interim orders

High Court cannot in writ jurisdiction make interim orders that would make the functioning of constitutional institutions a mockery; *Bhar C. S.C.* v. *Dr. Shiv Jalan Kapur*, (1994) 4 SCC 68.

Joint petitions

Disposal of joint writ petitions on separate issues by one order is not sustainable; *R.S. Pandey* v. *State of Uttar Pradesh*, AIR 1996 SC 717 (paragraph 3).

Jurisdictional Limitations

Where the relief sought by a writ petitioner before the High Court is such that it cannot be granted by the High Court (in view of limitations on its jurisdiction), then the High Court should not issue notice to the respondent (Union of India), but should dismiss the petition *in limine*. Writ procedure should not be resorted to, just to seek publicity; *Union of India* v. *S.P. Anand*, AIR 1998 SC 2615 (Nov.).

Laches

Petition under article 226, challenging land acquisition proceedings, which is filed near about 7 years after the notification under section 6 of the Land Acquisition Act, 1948 is issued, is not maintainable, if the delay is not explained; *V.N.E.P.P. Association* v. *Under Secretary, Delhi Admn.*, AIR 1990 SC 849, paragraph 4. (However, as the Government made an offer to make alternative site available, certain directions were issued by the Supreme Court).

Writ for "other purposes" may be refused, if the petitioner has been guilty of laches or acquiescence. *See* undermentioned cases:

(i) *Ashok* v. *Collector*, AIR 1980 SC 112 paragraph 7.

(ii) *Union of India* v. *Verma*, AIR 1957 SC 882, 884.

(iii) *Pannalal* v. *Union of India*, AIR 1957 SC 397, 512.

Legal assistance

Right to be represented by a lawyer is not a necessary ingredient of natural justice but in particular circumstances it may be required as a condition of fair play, *e.g.*, in the case of a departmental proceeding against an employee where the employer is a legally trained mind; *Agarwal* v. *H.S.D.C.*, (1991) 2 SCC 283, paragraphs 4 and 8.

Right to be represented by a lawyer is not a necessary ingredient of natural justice but in particular circumstances, it may be required as a condition of fair play; *Maharashtra S.B.S.E.* v. *Gandhi*, (1991) 2 SCC 716, paragraph 17.

Legal binding

The law declared by the High Court is binding on all subordinate courts within the State; *East India Commercial Co.* v. *Collector of Customs*, AIR 1962 SC 1895.

Legitimate expectation

Under the doctrine of 'legitimate expectation', even a non-statutory policy or guideline issued by the State would be enforceable against the State if a person can show that he has been led to take certain action on the basis of or on the legitimate expectation that the Government would abide by such policy or guideline. In such a case, deviation from the policy would be arbitrary and involve a violation of article 14; *Narendra* v. *Union of India*, (1990) Supp SCC 440, paragraphs 106-107.

Local authority

The court can interfere with the action of a statutory local body where the action of the local authority is *ultra vires*, *e.g.*, where a local authority, having the power to approve or disapprove building plans, approves the plan subject to a condition that it has no authority to impose, *mandamus* will issue, commanding it to approve the plan as submitted, *e.g.*, without the *ultra vires* condition; *Bangalore Medical Trust* v. *B.S. Muddappa*, AIR 1991 SC 1902.

A local authority having a legal grievance may be able to take out a writ. Thus a writ was issued on the petition of a local authority against a public utility concern, for the latter's failure to fulfil its statutory obligation to supply power to the local authority, which was a consumer of electricity; *Corporation of Nagpur* v. *N.E.L. & P.Co.*, AIR 1985 Bom 498.

Mining lease

Petition was filed to quash premature termination of lease for mining. Relief of damages was not claimed. Termination of the lease (premature) was void, because no hearing was given to the lessee. It was held, that it was not proper to ask the petitioner to file suit for compensation. The

Supreme Court appointed an arbitrator to determine compensation/damages; A*ssam Sillimanite Ltd.* v. *Union of India*, AIR 1990 SC 1417.

As to premature termination, see *State of Haryana* v. *Ram Kishan*, AIR 1988 SC 1301: (1988) 3 SCC 416.

Mala fide

The mere fact that the Investigating Officer ruled out certain documents as irrelevant, is no ground to assume that he acted *mala fide; State of Bihar* v. *Sharma*, AIR 1991 SC 1260, paragraphs 16 and 23.

Mandamus

Mandamus will issue against an inferior tribunal where an inferior tribunal has refused to carry out the *intra vires* directions of its superior tribunal; *Union of India* v. *Kamalakshi*, (1991) 2 UJSC 617, paragraph 6.

Mandamus will not issue to direct a subordinate Legislative authority to enact or not to enact a rule, order or notification which it is competent to enact; *Supreme Court Employees* v. *Union of India*, AIR 1990 SC 334, paragraphs 50-56.

Mandamus would issue to cancel a seniority list or promotion and to make necessary adjustments, which the seniority list has been made in contravention of the statutory rules or making *ad hoc* deviations therefrom; *Garg* v. *State of Uttar Pradesh*, (1991) 2 UJSC 571, paragraphs 22 and 25.

The existence of a statutory remedy is no bar to *mandamus* where the ground on which relief is sough is beyond the competence of the statutory tribunal to entertain, *e.g.*, where the act or omission complained of, *e.g.*, alternation of delimitation of constituencies, took place at a time *anterior* to the commencement of the electoral process; *State* v. *Nagendra*, AIR 1991 Kant 317, paragraph 35 (FB).

Mandamus will not issue against the Chief Justice of a High Court in the matter of assigning cases to the puisne Judges, in the absence of some clear breach of the rules governing the matter: A*vadhesh* v. *State*, AIR 1991 All 52, paragraph 6.

Mandamus would issue to command a statutory authority to perform its duty to exercise its discretion according to law, but not to exercise its discretion in a particular manner unless that is expressly required by the law; *U.P.S.R.T.C.* v. *Mohammed Ismail*, (1991) 3 SCC 239, paragraph 12 (3 Judges).

Relief by way of *mandamus* which is discretionary may be refused, when there is no legal or constitutional obligation which is capable of being enforced by *mandamus*, *e.g.*, to direct any Minister to resign, in the absence of any statutory or constitutional provision; *Avadhesh* v. *State*, AIR 1991 All 52, paragraphs 8, 9 and 10; *Cf. Vimla* v. *State of Uttar Pradesh*, (1990) Supp SCC 770, paragraph 4.

Where an administrative authority has the duty to exercise a discretion or power, but has failed to exercise it, the court cannot, by issuing a *mandamus*, either direct the authority to make an order in exercise of the discretion in any particular direction nor can the court make the administrative order itself. The proper direction should be that the authority shall make a proper order after exercising his discretion accordingly to the circumstances of the case, *e.g.*, even where the court finds the petitioner to be the highest bidder; *Munindra* v. *State of Uttar Pradesh*, (1993) Supp 1 SCC 437.

Where irregularities in hospital administration of a Government hospital are alleged, the court can appoint a commissioner to ascertain the facts. But it cannot issue *mandamus* directing the State Government to appoint a commission of inquiry. It is discretionary to set upon a commission of inquiry (unless the legislature passed a resolution). Where there is discretionary jurisdiction, no *mandamus* can be issued; *Siddha Raj Dhadda* v. *State*, AIR 1990 Raj 34.

Natural justice

Dealing with the application of principle of natural justice in the context of the employment relationship, the Supreme Court has held that punishment cannot be applied retrospectively in respect of an act committed before that particular act was made penal. It is a basic principle of natural justice that no one can be penalised on the ground of conduct which was not penal on the day it was committed. The date of show cause notice being April 21, 1983, the unauthorised absence from duty, which had been taken into consideration, is from December 20, 1982 to April 20, 1983. Whole of this period being prior to the date of amendment of Regulation 1614, the same could not be made as a ground for proceeding under ground (c) of Regulation 1614. The notice served on the appellant was thus legal and as a consequence the order of termination cannot be sustained and has to be set aside; *Pyare Lal Sharma* v. *Managing Director*, (1989) 59 Factory Law Reports 220 (SC).

The applicability of the other rules of natural justice will depend on the statutory provisions under which action has been taken, and the facts and circumstances of each case; *Union of India* v. *Nambudri*, (1991) 3 SCC 38, paragraph 6.

Principles of natural justice have been extended to administrative orders, where civil rights are affected or civil consequences ensue.(*See* '*certiorari* against administrative action', *post*); *Union of India* (1991) 3 SCC 38, paragraph 7.

Natural justice has been imported into article 311(2) of the Constitution itself by judicial interpretation of the expression 'reasonable opportunity' therein; *Union of India* v. *Ram Jan*, (1991) 1 SCC 588, paragraphs 13 and 15.

The obligation to hear before deciding cannot be implied where there is anything in the statute itself to prohibit such obligation; *S.C.W.S.W.A.* v. *State of Karnataka*, (1991) 2 SCC 604, paragraph 15.

Where an order or notification can be made only after hearing the parties to be prejudicially affected thereby, a rescission or revocation thereof under section 21 of the General Clauses Act, 1897 would require a similar hearing of the persons who would be affected by such rescission; *S.C. & W.S. Welfare Association* v. *State of Karnataka*, (1991) 2 SCC 604, paragraphs 15-16.

The principles of natural justice are applicable even to administrative inquiries, which means that even where the nature of the function (*e.g.* price-fixing) does not require the hearing of the person affected, the authority must nevertheless observe the requirement of reasonableness and fair play, *Union of India* v. *Nambudri*, (1991) 3 SCC 38, paragraph 7.

If a statutory provision either specifically or by necessary implication *excludes* the application of any rule of natural justice, then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice; *Neelima* v. *Harinder*, AIR 1990 SC 1402.

No obligation to offer an opportunity of being heard arises where a student has secured admission through a *fraudulent device; U.P., I.D.A.C.* v. *Nandwani*, (1990) 4 SCC 633, paragraph 5.

There would be a sufficient compliance with the requirements of natural justice in cases of disciplinary proceedings against students, if in the given facts, the students have been given a fair deal; *Maharashtra S.B.S.E.* v. *Gandhi*, (1991) 2 SCC 716, paragraphs 15, 26 and 37.

Natural justice requires that opportunity to be heard must be given to the accused for enhancing the sentence; *Govind* v. *State of Maharashtra*, (1990) 4 SCC 718, paragraph 15.

Administrative functions of a legislative nature do not attract the requirements of natural justice; *O.N.G.C.* v. *Assn. N.G.C.*, (1990) Supp SCC 397, 439; *Shri Sitaram Sugar Co. Ltd.* v. *Union of India*, (1990) 3 SCC 223, paragraph 44 (CB).

Principles of natural justice are not attracted to the disposal of a petition under section 177(2) of the Army Act, 1950; *Union of India* v. *Amrik*, (1991) 1 SCC 654, paragraph 8.

Nemo judex in causa sua

The maxim "*nemo judex in causa sua*" (no one should be a judge in his own cause) is one of the principles of natural justice. It originated in Lord Coke's pronouncement in Dr. *Bonham's* case (1910) 8 Co Rep 1142. It prohibits a person from trying a matter, if he has a bias.

Notification

Article 226 confers on the High Courts power to issue appropriate writs to any person or authority within their jurisdiction, in terms absolute and unqualified. Petitioner challenged a notification issued in Delhi. It was held that the Delhi High Court had jurisdiction to entertain and try the writ petition; *Vareli Weaves Pvt. Ltd.* v. *Union of India*, AIR 1996 SC 1543 (paragraph 5).

Parties

A person who acquires interest during the pendency of a writ proceeding on the express condition that his interest would abide by the decisions in that proceeding, need not be impleaded; *N.C.H.S.* v. *Union of India*, AIR 1993 SC 155, paragraph 14.

Policy and discretion

The court will not interfere with an order of an administrative authority or the Government where the order rests on its statutory discretion, unless the order is arbitrary or capricious, or is *ultra vires* of statutory rules or *mala fide* or an abuse of power; *Mahajan* v. *J.M.C.*, (1991) 3 SCC 91, paragraphs 41, 43 and 45.

The court will not issue directions over the compliance of which it shall have no control; *Suresh* v. *R.C.D.*, (1991) UJSC 343, paragraph 7.

No court or tribunal can compel the Government to change its policy involving expenditure; *Union of India* v. *Tejram*, (1991) 3 SCC 11, paragraph 4.

The court cannot direct any party to disobey a statute, even on humanitarian grounds; *State of Tamil Nadu* v. *J.T.T.I.*, (1991) 2 UJSC 162, paragraph 5.

Pollution: disposal of petition by consent

Where there is unabated pollution of a river, than a petition in respect thereof cannot be disposed of by the High Court merely on the consent of the State Pollution Control Board; *Re:- Bhavani River* v *Sakthi Sugar Ltd.*, AIR 1998 SC 2578.

Premature petition

Writ cannot be issued where the cause of action has not yet matured that is to say where the petition is still premature; *Trilok* v. *DM*, AIR 1976 SC 1988.

Preventive detention

It is open to the court to consider the facts and circumstances to ascertain whether the detenue was feigning ignorance of the language in which the order had been communicated to him; *Kubic* v. *Union of India*, (1990) 2 SCJ 132, paragraph 10.

Under article 22(3)(b) [as well as section 11(4) of the National Security Act, 1980, which is in conformity with it], a person under preventive detention has no right to appear before the Bench through a lawyer; *Anil* v. *Union of India*, (1991) Cri LJ 605 (SC), paragraph 7.

The order of detention will be invalid, for contravention of article 22(5), where there has been an unexplained delay in considering the representation of the detenue; *Mahesh* v. *Union of India*, (1990) 2 SCJ 359, paragraph 20.

In the absence of unexplained delay in considering the representation of the detenue, the consideration of the representation is not vitiated merely because it has taken place after the order has been 'confirmed' because (under the COFEPOSA) Government has the power to revoke the order of detention if, after consideration of the representation, the Government finds that the order has not been in conformity with the statutory power; *Abdulla* v. *Union of India*, (1991) Cri LJ 790 (SC), paragraphs 19, 20 (CB).

The order of detention will be invalid, for contravention of article 22(5), where the representation has not been considered by the authority specified by the statute; *Amir* v. *Hingliana*, Cri LJ 2713 (SC), paragraph 12.

The genuineness of the subjective satisfaction is not whittled down by the mere fact that there was delay in arresting the detenue pursuant to the order of detention; *Abdul* v. *Union of India*, AIR 1990 SC 1446.

The order of detention will be invalid, for contravention of article 22(5), where the representation has not been considered by the authority specified by the statute; *Kubic* v. *Union of India*, (1990) 2 SCJ 102, paragraph 22.

Under the ground of want of legislative competence will come those cases where the ground shown in the detention order does not come under Entry 9 of List 1 or Entry 3 of List III. Thus, the order will be quashed where a solitary incident of breach of law and order, *e.g.*, a murderous assault is relied upon as constituting a breach of 'public order'; *Devaki* v. *Government of Tamil Nadu*, (1990) 3 SCJ 303, paragraph 189 (3 Judges).

Where there is no question of legislative competence as above, a solitary act may offer a good ground for the subjective satisfaction of the detaining authority where there are circumstances to lead to the reasonable inference that the person concerned would be likely to repeat that act so as to warrant his detention, *e.g.*, a single act of smuggling (under the COFEPOSA) followed by an attempt to obtain passport in a false name; *Sulthan* v. *Jt. Secy.*, (1991) 1 SCJ 239, paragraph 7.

There would be violation of article 22 if all the materials which would have been relevant for the subjective satisfaction of the detaining authority were not placed before him or were not annexed to the order of detention and supplied to the detenue; *Abdul* v. *Union of India*, (1991) Cri LJ 430 (SC), paragraph 7; *Ahmed Kutty* v. *Union of India*, (1990) 2 SCC 1.

Apart from a plain transgression of the terms of the statute authorising the detention, the detention may be illegal by reason of the abuse of the statutory power, non-application of mind; *Devaki* v. *Government of T.N.*, (1990) 3 SCJ 303, paragraph 3; *Abhay* v. *Bhave*, (1991) 1 SCJ 607, paragraph 9.

Preventive detentions stay

The court has jurisdiction to issue an interim order of stay against the execution of an order of preventive detention. But the very object of preventive detention would be defeated if this power is used in every case. It should, therefore, be used sparingly, only in cases where the court is *prima facie* satisfied that the *authority* which passed the order had no authority to do so; *Addl. Secy.* v. *Gadia*, (1991) 1 SCJ 200, paragraph 19.

Price fixation

(a) Before the fixation of prices or zoning of factories for that purpose opportunity of hearing need not be given to consumers.

(b) However, fair play and reasonableness must still be observed.

Niyami v. *Union of India*, (1990) 4 SCC 516, paragraphs 11-12.

Prisons

The literature on prison justice and prison reform shows that there are nine major problems which afflict the system and which need immediate attention. These are (1) overcrowding; (2) delay in trial; (3) torture and ill-treatment; (4) neglect of health and hygiene; (5) insubstantial food and inadequate clothing; (6) prison vices; (7) deficiency in communication; (8) streamlining of jail visits, and (9) management of open-air prisons. The Supreme Court of India has, given directions to remedy the above problems; *Ram Murthy* v. *State of Karnataka*, (1997) 2 SCC 642, paragraphs 14, 51.

Probationer

Where under the relevant Rules the services of an unconfirmed probationer can be terminated by one month's notice and there is no provision for extending the period of probation, he cannot be deemed to have been confirmed merely on the expiry of the statutory period of probation. No question of giving him an opportunity for terminating his employment on the expiry of the specified period of probation arises; *Municipal Corporation* v. *Ashok*, (1991) 2 UJSC 170, paragraph 6.

Promissory estoppel

The doctrine of promissory estoppel cannot be invoked when the petitioner knew all the facts and there was no question of his being misled by the representation or the authority or the Government was under a legal duty or prohibition to act in a particulate manner, or the application of the doctrine would involve the violation of a statute, or the petitioner failed to substantiate that he had altered his position, relying on he alleged representation or the officer concerned was not competent and acted beyond the scope of his authority, so that the alleged representation was *ultra vires*; *Vasant* v. *Board of Trustees*, AIR 19991 SC 14.

The doctrine of promissory estoppel would operate where injustice would be caused to the promisee if the promisor would be allowed to go back on the promise. But the facts giving rise to the doctrine must be pleaded; *Andhra S.C.* v. *A.P.S.E.B.*, (1991) SCC 263, paragraphs 13-15.

Public interest litigation

The distinction between private litigation and public interest litigation can be explained in the following words:—

> In a public interest litigation, unlike traditional dispute resolution mechanism, there is no determination or adjudication on individual rights. While in the ordinary conventional adjudications, the party structure is merely bi-polar and the controversy pertains to the determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions. The compulsion for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher in an egalitarian social order and a welfare State .... The dispute is not comparable to one between private parties, with the result that there is no recognition of the status of a *dominus litis* for any individual or group of individuals to determine the course or destination of the proceedings, except to the extent recognised and permitted by the court. The "rights" of those who bring the action on behalf of the others must necessarily be subordinate to the "interests" of those for whose benefit the action is brought. The grievance in a public interest action, generally speaking, is about the content and conduct of Government action in relation to the Constitutional or statutory rights of segments of society and, in certain circumstances the conduct of Government policies. Necessarily, both the

party structure and the matters in controversy are sprawling and amorphous, to be defined and adjusted or re-adjusted as the case may be, *ad hoc*, according as the exigencies of the emerging situations. The proceedings do not partake of predetermined private law litigation models, but are exogenously determined by variations of the themes.

Sheela Barse v. *Union of India*, AIR 1988 SC 2211, paragraph 6.

Public interest litigation is a proceeding in which an individual or group seeks relief in the interest of the general public and not for its own purpose. The spate of such litigation has enriched the law, modified the traditional doctrine of *locus standi* and led to the devising of new remedies and procedures. Of the numerous cases on the subject, the following are worth study, as illustrating the basic and important features:—

(i) *S.P. Gupta* v. *Union of India*, AIR 1982 SC 149, 194 (Scope and basic approach).

(ii) *D.C. Wadhwa* v. *State of Bihar*, AIR 1987 SC 579, paragraph 38 (*Locus Standi*).

(iii) *Ratlam Municipality* v. *Vardichand*, AIR 1980 SC 1622 (General).

(iv) *Fertilizer Corporation* v. *Union of India*, AIR 1981 SC 344 (*Locus Standi*).

(v) *Peoples' Union for Democratic Rights* v. *Union of India*, AIR 1982 SC 1473 (General).

(vi) *State of Himachal Pradesh* v. *Parent*, AIR 1985 SC 910 (Mode of entertaining).

(vii) *Shivajirao* v. *Mahesh*, AIR 1985 SC 194, paragraphs 35 and 36 (Mode of entertaining).

Regarding public interest litigation a Calcutta case elaborates as under:—

> in case of public interest litigation, the persons concerned who move such writ application not for enforcing his personal right but filed by public spirited and individual espousing the cause of large number of people who are suffering under some legal wrong or injury and such person or determinated class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief and in such case any member of the public can maintain writ application.

Class actions are illustrated by Order 1, Rule 8 of the Code of Civil Procedure, 1908 and according to Mr. Justice Bhagwati Prasad Banerjee, members of the same class can file a writ application after obtaining leave of the court through one member filing it in a representative capacity and in such case the principle laid down in Order 1, Rule 8 is followed by which after notice is issued, any member of the class affected by the order may join and the members of the class are bound by such decision. This is permitted by law to avoid multiplicity of proceedings. However according to the Calcutta judgment (paragraph 14), the position is different regarding unincorporated associations:—

> Unincorporated associations are not legal persons and as such, writ petitions are not maintainable. An association could be formed to protect the interest of consumers, tenants or other groups with the common interest but such group cannot move writ application. No aspect of the representative law has been changing more rapidly than the law governing standing and the standing barrier has been substantially lowered in recent years, but on the basis of the law relating to standing as in England or in America as also in India, it can be held without any difficulty that the writ petition at the instance of an association is not maintainable where the association itself is not affected by any order. The members of such association may be affected by common order and may have common grievance, but for the purpose of enforcing the rights of the members, writ petition at the instance of such association is not maintainable. The door of the writ court could be made open at the instance of persons or authorities under the aforesaid four categories and to hold that every Tom, Dick and Harry can move the writ application would render the standing requirement meaningless and would introduce a procedure which is not judicially recognised; *Sand Carriers* v. *Board*, AIR 1990 Cal 176.

From the classical exposition about the concept of public interest litigation by Bhagwati, J. in *S.P. Gupta's* case, AIR 1982 SC 149, one can cull out the essentials of public interest litigation, as under:

(a) There must be a legal wrong caused to a person or to a determinate class of person, on whom burden is imposed in violation of law or without legal authority.

(b) The wrong must arise from violation of any constitutional or legal right.

(c) The wronged person (or determinate groups of persons) must be unable to approach the court for relief, by reason of—

(i) Poverty;

(ii) helplessness; or

(iii) social or economic disability or socially or economically disadvantageous position.

(d) If the above conditions are satisfactory, then any member of the public can seek judicial redress for the above wrong.

(e) But the court should be anxious to ensure that the person initiating the proceedings in acting *bona fide* to get redress for a public grievance and not to pursue any personal gain or from malicious motives.

(f) If the case is otherwise appropriate for public interest litigation then the court can act even on letters address to it.

The High Court of Punjab and Haryana has held in *Dr. Naginder Singh* v. *Punjab University*, AIR 1990 P&H 157, that public interest litigation cannot be used to obtain a declaration about the validity of a Law without any specific injury to the petitioner. In the above case, Dr. Naginder Singh, Director, Medical Diagnostic Centre, New Dayanand Medical College and Hospital, Ludhiana, who lost the election to the Senate, challenged the very Constitution of the Senate of the Punjab University. His argument was that section 13(1) of the Punjab University Act, 1947 which gave the Chancellor power to nominate members on the Senate conferred an arbitrary power and was unconstitutional. Apart from rejecting the argument on the merits, the High Court (Mr. Justice M.M. Punchhi, now in the Supreme Court) made the following observations in paragraph 7 of the Judgment:—

> Lastly, we fail to see how the instant litigation is a public interest litigation. It is pure and simply an attempt to seek declaration about the validity of a law without any specific injury to the petitioner. In our law, without any specific injury to the petitioner, such a writ for mere declaration to test the validity of law does not lie. As held in *S.P Gupta* v. *Union of India*, AIR 1982 SC 149, the individual who moves the court for judicial redress must be acting *bona fide* with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activated at the instance of such person and must reject his application at the threshold. It was further held that as a matter of prudence and not as a rule of law, the court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of judicial redress. The petitioner's learned counsel failed to identify and determine the class or group of persons who are aggrieved against the vesting and use of the power to nomination of Senate Members by the Chancellor of the University. The petitioner was a part of the Senate in the yester year and, as stated earlier, he fought the election this time too, but failed. He has rather, patently filed the instant petition with oblique motives having lost the election to the Senate, with political motivation by accusing the Chancellor of politicising the Senate by nomination. Thus, on the facts of this as we are of the considered view that the petitioner *lacks locus standi* to initiate the instant litigation as a public interest litigation and thus we reject his petition at the very threshold.

The court should not allow an unscrupulous person to vindicate his personal grudge in the garb of protecting a public or social interest. *See* the undermentioned cases:

(i) *Chhetriya Samiti* v. *State of Uttar Pradesh*, (1991) 1 SCJ 130, paragraph 8.

(ii) *Subhash* v. *State of Bihar*, (1991) 1 SCJ 564, paragraph 7.

Elaborate directions have been given by the court for vindication of the public interest, in such proceedings, informally instituted, *e.g.*, for reforming hospitals or jails; *Rakesh* v. *State of Bihar*, (1991) Supp 2 SCC 626; *Mathur* v. *State of Uttar Pradesh*, (1993) Supp 1 SCC 722, paragraphs 3 and 4.

An association cannot complain where only the personal rights of individual members are affected. This is not subject to the doctrine of "public interest litigation"; *S.C.W.S.W. Assn.* v. *State of Karnataka*, (1991) 2 SC 604, paragraph 7.

The law as to *locus standi* has been diluted by the advent of the doctrine of 'public interest litigation'; *B.M.T.* v. *Muddappa*, AIR 1919 SC 1902, paragraph 36.

Quasi-judicial authority

Quasi-judicial orders of a superior administrative authority are binding on all subordinate authorities. The High Court would interfere under article 226, in case a subordinate authority fails to follow the superior's order, irrespective of any question of *mala fides: Union of India* v. *K.F.C.*, (1991) 2 UJSC 617, paragraph 6.

It is not open to the parties before a quasi judicial tribunal (as in the case of courts) to assail its record of proceedings and the statement of facts made therein, as incorrect, unless steps are taken before the same forum; *Bhagwati* v. *D.S.M.D.C.*, (1990) 1 SCJ 433 paragraph 5.

Quo warranto

Quo warranto is a discretionary remedy which the court may grant or refuse according to the facts and circumstances of each case. Thus, the court may refuse it where the application was actuated by ill-will or malice, or ulterior motive; *Mokhtiar* v. *State*, AIR 1991 P&H 20, paragraph 6.

Reasons

An administrative act cannot be held to be *mala fide* or arbitrary, merely because reasons have not been given; *State of Bihar* v. *Ramjee*, (1990) 3 SCJ 52, paragraph 8.

Where the rule requires an authority to give its reasons where it disagrees with the report of an Inquiry Officer, there is no need to record reasons where it agrees with the Inquiry Officer; *Maharashtra S.B.S.E.* v. *Gandhi*, (1991) 2 SCC 716, paragraph 24.

Except where the Legislature has expressly or by necessary implication dispensed with the requirement to give reasons, every judicial or quasi judicial authority (whether its decisions are subject to appeal, revision or judicial review or not) must record reasons for its decision; *Mukherjee* v. *Union of India*, (1990) 3 SCJ 193, paragraphs 35-36 and 43 (CB).

Requirement to give reasons for the decisions of judicial or quasi judicial authority is based on the need to ensure fair play and to exclude arbitrary action or capricious decision; *Maharashtra S.B.S.E.* v. *Gandhi*, (1991) 2 SCC 716, paragraphs 20-21.

Reasonableness

Where an administrative action is *prima facie* unreasonable because there is no discernible principle to justify it, the burden is shifted to the State to show that the impugned decision is an informed action, and in such a case, if the reasons are not recorded, the decision will be struck down as violative of article 14 of the Constitution, *Shrilekha* v. *State of Uttar Pradesh*, (1991) 1 SCC 212, paragraphs 18, 23, 29. 31 and 39-40.

In administrative law, 'reasonableness' has not the same meaning as in the law of torts, where the test used is that of a 'reasonable man'. In administrative law, it simply indicates an improper

use or *abuse* of power. In this context, the court cannot interfere merely because the court thinks that the administrative action or decision has been unwise; *Mahajan* v. *J.M.C.*, (1991) 3 SCC 91, paragraphs 41, 43 and 45.

Refund of tax

Petition for writ to enforce the obligation of state to refund or return the money collected towards an illegal tax or duty.

(i) *New India Industries Ltd.* v. *Union of India*, AIR 1990 Bom 239 (FB)paragraph 5.

(ii) *Shree Baidyanath Ayurved Bhawan* v. *State of Bihar*, AIR 1996 SC 2829.

Relief

While finding that an educational institution has wrongly interpreted the directions of the court, the court may condone the defect so far as the admissions already made on the basis of the wrong interpretation, in order to save the admitted candidates (who were not at fault, *State of Bihar* v. *Sanjay*, AIR 1990 SC 749, paragraph 6.

Equitable considerations weigh with the court partly in adjusting the rights of competing co-employees under the Government, in matters of seniority, promotion and the like; *Dwarka* v. *Union of India*, AIR 1990 SC 428 paragraphs 11, 13-14.

The relief that may be granted under article 226 may be—

(a) setting aside an illegal order;

(b) declaratory;

(c) restitutionary (Refund of invalid tax);

(d) other consequential relief.

See the undermentioned cases:

(i) *Calcutta Discount Co.* v. *I.T.O.*, AIR 1961 SC 372.

(ii) *B.B.L.&T. Merchants Association* v. *State of Bombay*, AIR 1962 SC 486.

(iii) *State of M.P.* v. *Bhailal*, AIR 1964 SC 1006.

(iv) *Dwarka* v. *I.T.O.*, AIR 1966 SC 81.

(v) *Desai* v. *Roshan*, AIR 1976 SC 578.

(vi) *Rambhadraiah* v. *Secretary*, AIR 1981 SC 1653.

Remedy-extraordinary and discretionary

The remedy of writ is—

(a) extraordinary;

(b) discretionary (unless a fundamental right is involved);

(c) dependent on there being a cause of action;

(d) exercisable only against the parties before the court.

The undermentioned cases illustrate the above aspects:

(i) *Abraham* v. *I.T.O.*, AIR 1961 SC 609 (Alternative remedy).

(ii) *State of Rajasthan* v. *Karam Chand*, AIR 1965 SC 913 (Fundamental right).

(iii) *Khurai Municipality* v. *Kamal Kumar*, AIR 1965 SC 1321 (Mandatory provision violated).

(iv) *Bhopal Sugar Industry* v. *I.T.O.*, AIR 1967 SC 5949 (Alternative remedy).

Res judicata

Where there has been a decision on the merits, the rule of constructive *res judicata* will be applicable to bar a second application founded on the same cause of action or as regards relief,

which were asked for but not granted in the previous proceeding under article 226, or as regards a ground which ought to have been taken in the previous application, according to *Explanation* IV to section 11 of the Code of Civil Procedure, 1908; *The Direct Recruit Class-II Engineering Officers' Association* v. *State of Maharashtra*, AIR 1990 SC 1607, paragraph 35.

Service matters

In a writ proceeding relating to a service matter, even where the petition is dismissed on the merits, the court may recommend a lesser punishment in view of the meritorious service of the delinquent; *Laxmi Shanker Pandey* v. *Union of India*, AIR 1991 SC 1070, paragraphs 5, 7; *Katarki* v. *State of Karnataka*, AIR 1991 SC 1241, paragraph 6.

State Government

Direction given by the High Court under article 226 cannot be altered by the State Government; *Parukutty Mannadissiar* v. *State of Kerala*, AIR 1990 SC 817, 819, paragraphs 4-6.

Statutory authority

The court would interfere where the statutory authority blindly acts in compliance with the direction or advice given by the Government or the Commission; *Nagaraj* v. *Syndicate Bank*, (1991) 2 UJSC 217, paragraphs 15, 17 and 19.

Statutory instrument

A statutory instrument may be *ultra vires* if it abuses its power by acting in bad faith; *Supreme Court Employees* v. *Union of India*, AIR 1990 SC 338, paragraph 105.

Suppression of facts

Suppression of facts may disentitle a petitioner seeking a writ "for other purposes". *See* the undermentioned cases:

(i) *Maganlal* v. *Municipal Corporation*, AIR 1975 SC 648.

(ii) *Welcome Hotel* v. *State of Andhra Pradesh*, AIR 1983 SC 1015.

(iii) *Vijay Kumar* v. *State of Haryana*, AIR 1983 SC 62.

Students

Disciplinary proceedings

It is settled that a disciplinary proceeding against a student on the ground of some misconduct, *e.g.*, malpractice at an examination, is a *quasi judicial* proceeding.

(i) *Board of High School* v. *Ghanshyam*, AIR 1962 SC 1110.

(ii) *Board of High School* v. *Chitra*, AIR 1970 SC 1939.

The principles of natural justice must be observed, in such inquiries; *Board of High School* v. *Ghanshyam*, AIR 1962 SC 1110.

Examinations

The examination of a candidate or the result thereof cannot be cancelled, without informing him or her of the nature of accusation made.

(i) *Board of High School* v. *Chitra*, AIR 1970 SC 1939.

(ii) *Suresh* v. *University of Kerala*, AIR 1969 SC 198, 202.

The student must be offered an opportunity of being heard and of defending himself or herself.

(i) *Board of High School* v. *Chitra*, AIR 1970 SC 1939.

(ii) *Board of High School* v. *Bagleswar*, (1963) 3 SCR 767.

(iii) *Prem* v. *Punjab University*, AIR 1972 SC 1408.

This is so, whether there is a statutory obligation to proceed *quasi judicially* or not.

(iv) *Board of High School* v. *Chitra*, AIR 1970 SC 1939.

Exception exists for cases like mass-copying, where the evidence of unfair means is perfectly plain that transparent; *Bihar School Board* v. *Sinha*, (1970) 1 SCR 648

Illustrations of quasi judicial acts

The following acts have been held to be *quasi judicial*, where they are done by the authorities on the ground of misconduct or behaviour of the student:—

(i) Expulsion; *Board of High School* v. *Ghanshyam*, AIR 1962 SC 1110.

(ii) Rustication; *Board of High School* v. *Ghanshyam*, AIR 1962 SC 1110.

(iii) Cancellation of admission; *Prasant* v. *Lingaraj Law College*, AIR 1977 Ori 107.

(iv) Suspension of a student; *Rakesh* v. *State of Punjab*, AIR 1965 Punj 507, 509.

(v) Cancellation of admission to an examination;

(vi) Disqualified from sitting at examination; *Prem Prakash* v. *Punjab University*, AIR 1972 SC 1408.

(vii) Cancellation of examination; *Bihar School Board* v. *Sinha*, (1970) 1 SCR 648.

Discretion of the institution

Subject to the above *quasi judicial* obligation, it is within the jurisdiction of the educational institution or the tribunal set up by it to decide all relevant questions in the light of the evidence adduced before it; *Suresh* v. *University of Kerala*, AIR 1969 SC 198, 202.

Difference from criminal trials

It would not be reasonable to import into such inquiry all considerations which govern criminal trials in courts of law; *Suresh* v. *University of Kerala*, AIR 1969 SC 198, 202.

Procedure

It is open to the domestic tribunal to evolve its own *procedure* for inquiry *etc.*

(i) *Board of High School* v. *Bagleswar*, (1963) 3 SCR 767.

(ii) *Prem* v. *Punjab University*, AIR 1972 SC 1408.

(iii) *State of Mysore* v. *Sivabasappa*, AIR 1963 SC 375.

Natural justice

There would be a sufficient compliance of the requirements of natural justice in such case if—

(i) the delinquent student is informed of the charge or the case he has to meet; *Suresh* v. *University of Kerala*, AIR 1969 SC 198, 202.

(ii) he is given an adequate opportunity of meeting such charges and the materials used against him and of stating his own case.

(1) *Suresh* v. *University of Kerala*, AIR 1969 SC 198, 202.

(2) *Nagraj* v. *University of Mysore*, (1968) SC (CA 1957/66 dt. 15-4-1968).

Guwahati University v. *Raj Konwar*, (1970) Assam LR (SC)1.

Cross-examination

If the above two conditions are satisfied, the proceeding cannot be vitiated on the ground that the delinquent was not given an opportunity of cross-examining the witness examined against him that they were examined in his absence.

(i) *Nagraj* v. *University of Mysore*, CA 1957/66 dated 15-4-1968).

(ii) *Guwahati University* v. *Raj Konwar*, (1970) Assam LR (SC)1.

Or that the report of the inquiry Officer was not supplied to him; *Suresh* v. *University of Kerala*, AIR 1969 SC 198, 202.

Inquiry when not necessary

No inquiry of any sort is necessary where the adoption of unfair means by an examinee is detected by the invigilators at the examination hall and the examinee is expelled from the hall on that ground; *University of Calcutta* v. *Dipa Pal*, AIR 1952 Cal 594.

Similarly, where the identity of wrong answers offers intrinsic evidence of copying them from the same source, the court cannot interfere on the ground that the inquiring authority acted without any evidence.

(i) *Board of High School* v. *Bagleswar*, (1963) 3 SCR 767.

(ii) *Prem Prakash* v. *Punjab University*, AIR 1972 SC 1408.

Standard of proof

The court cannot apply the same strict standard as is applicable to criminal charges before a court of law in the case of a domestic body.

(i) *Board of High School* v. *Bagleswar*, (1963) 3 SCR 767.

(ii) *Prem Prakash* v. *Punjab University*, AIR 1972 SC 1408.

Circumstantial evidence

The court would not interfere on the ground that the decision of the authority is not supported by any evidence, where there is circumstantial evidence to justify it; *Maharashtra S.B.S.E.* v. *Gandhi*, (1991) 2 SCC 716 (paras 15, 26, 37).

It is not necessary to make a formal inquiry after issuing a show cause notice where the charge was of all the examinees at a centre *en masse* using unfair means as distinguished from the case of any particular examinee being so charged; *Bihar School Board* v. *Subhash*, AIR 1970 SC 1269, 1273.

Punishment

The court under article 226 cannot sit as a court of Appeal over such domestic tribunals, *e.g.*, the matter of quantum of punishment (in the absence of any statutory limitations in that behalf).

Disciplinary action

The head of an educational institution has the inherent power to take disciplinary action against students who misbehave. (In this case safety of girl students was involved); *Hiranath* v. *Principal*, (1973) UJSC 83.

Suppression and non-disclosure

Non-disclosure of a fact which is not material is different from suppression of material fact. Non-disclosure of a fact which is not material is not fatal to a writ petition; *Zilla Panchayat Bijnor* v. *VIIth Additional District Judge, Bijnor*, AIR 1998 ACC 346.

Tax

Even where a petition under article 226 would lie for refund on the ground of declaration of unconstitutionality of a tax, the court would not be bound to order refund automatically; *Orissa Cement* v. *State of Orissa*, AIR 1991 SC 1676, paragraphs 72-73 (3 Judges).

A refund of tax already collected may be ordered in a proceeding for a *mandamus* as a consequential relief for the enforcement of fundamental rights; *Salonah Tea* v. *Supdt. of Taxes*, AIR 1990 SC 772, paragraph 6.

Tender forms

Applicant for a tender form could not show that it was eligible and qualified or satisfied the required conditions for the grant of tender form in its favour. It was held that the authority was not acting arbitrarily in refusing tender form. No relief could be granted to the petitioner; *Eureka Engineers Cooperative* v. *Superintending Engineer*, AIR 1998 Cal 12.

Tribunal

Even where the jurisdiction of the courts is excluded by the statute or the Constitution itself, *e.g.*, under article 226(2), the Supreme Court retains its jurisdiction to decide the parameters of the jurisdiction of the Tribunal which depends upon an interpretation of the Constitution or the statute (as the case may be). What is excluded is the power of the courts to sit in judgment over the merits of the Tribunal's decision; *State of Tamil Nadu* v. *State of Karnataka*, (1991) 2 UJSC 134.

Unincorporated association

An unincorporated association does not fall within any of the above categories. Unincorporated associations are not legal "persons" and, as such, writ petitions are not maintainable by them. An association could be formed to protect the interests of consumers, tenants or other groups, with common interest, but such a group cannot move a writ application, if it is not incorporated. Nor can they move writ application as a public interest litigation in a representative capacity; *Land Carriers Owners Union* v. *Trustees Board of Calcutta*, AIR 1990 Cal 176, paragraphs 13 and 14 (Bhagavati Prasad Banerjee, J.).

An association of persons (registered or unregistered) can file a writ petition to enforce the members' rights where the members are unable to approach the court because of poverty *etc.* or in case of public interest litigation; *Umesh Chand* v. *Krishi Utpadan Mandi Samiti*, AIR 1984 All 46 (FB) paragraph 20.

Unregistered association

According to the Madras High Court, an unregistered association cannot file a writ petition. *T.N.A.D.O. Association* v. *Secretary to Government of Tamil Nadu*, AIR 1989 Mad 224 (FB).

Universities

The Chancellor, when acting under section 31(8)(a) of the U.P. State Universities Act, 1873, is not acting in a quasi judicial capacity, but in an administrative capacity. There is no provision in the section for hearing, and natural justice cannot be implied. Of course, the Chancellor has to act properly and for the purpose for which the power is conferred. He must take a decision in accordance with the Act and the statutes of the University. He must not be guided by extraneous or irrelevant considerations. He must not act illegally, irrationally or arbitrarily; *Neelima Misra* v. *Harinder Kumar Paintal*, AIR 1990 SC 1402, 1410, 1411, paragraphs 24-26.

Waiver

A candidate cannot be forced to withdraw an application for admission to medical college. "If a candidate can withdraw his application for admission to Medical/Dental college, he can certainly withdraw the application for admission to medical/Dental college or physiotherapy course." The High Court pointed out that there was no rule by which the High Courts could obtain the candidate's signature on an application for withdrawal; *S.K. Awatramane* v. *State of Gujarat*, AIR 1990 Guj 65, 73, paragraph 13 (R.C. Mankad, J.).

As held in *Bashesharnath* v. *I.T.C.*, AIR 1959 SC 149, article 14 is in the nature of an admonition to the State. There cannot be a waiver of fundamental rights. If a person who has taken an examination agrees (when applying for re-evaluation) to abide by the notification which prohibits re-ranking that part of the notification is not binding on him; *Ajay Bansal* v. *Bangalore University*, AIR 1990 Kant 225, paragraph 17.

Powers of a statutory authority cannot be enlarged by—

(a) acquiescence;

(b) waiver, or

(c) estoppel.

Acquiescence is thus inoperative, to validate action which is not authorised by the statute under which the action purports to be taken.

(i) *Dhrangadhra Chemical Works* v. *State of Gujarat*, (1973) 2 SCC 345, paragraph 16.

(ii) *Maritime Electric Co.* v. *General Dairies*, (1937) AC 610 (HL).

Waiver or estoppel cannot validate an action which is *ultra vires; Essex Union* v. *Essex C.C.*, (1963) AC 808 (HL).

[1]**[226A. Constitutional validity of Central laws not to be considered in proceedings under Article 226.**—[*Rep. by the Constitution (Forty-third Amendment) Act, 1977, sec. 8 (w.e.f. 13.4.1978).*]]

227. Power of superintendence over all courts by the High Court.—[2][(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction.]

(2) Without prejudice to the generality of the foregoing provisions, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 39 (w.e.f. 1-2-1977).
2. Clause (1) has been successively subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 40 (w.e.f. 1-2-1977) and the Constitution (Forty-fourth Amendment) Act, 1978, sec. 31 to read as above (w.e.f. 20-6-1979).

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

[1][***]

Notes on Article 227

Interference under article 227 (1) can be *suo motu*, but cannot be resorted to merely because the High Court takes a different view on the merits. Generally, it is limited to want of jurisdiction, errors of law, perverse findings, gross violation of natural justice and so on.

See the undermentioned cases:

(i) *Nibaran* v. *Mahendra*, AIR 1963 SC 1895.

(ii) *D.N. Banerjee* v. *Mukherjee*, (1953) SCR 302, 304.

(iii) *Chandavarka* v. *Ashalata*, (1986) 4 SCC 447.

(iv) *Mohd. Yunus* v. *Mohd. Mustague*, AIR 1984 SC 38.

West Bengal Act 25 of 1988 has inserted, in the Code of Civil Procedure, 1908, a new section 115A, giving revisional jurisdiction to the District Court. The new section 115A, *inter alia* bars further revision "by the High Court or any other court", by providing that the decision of the District Court on such proceeding shall be final. But the Calcutta High Court has held, that the Act cannot deprive the High Court of its power of superintendence under article 227 of the Constitution. "No legislation—and far less a State legislation—can forfeit, curtail, enlarge or abridge the power under article 227 of the Constitution. By ordinary process of legislation, even the Union Legislature cannot do it"; *Umaji* v. *Radhikabai*, AIR 1988 SC 1272, following *Paltu Dutta* v. *S.M. Nibedita*, AIR 1990 Cal 262, 265, paragraph 11 (A.K. Nandi, J).

Scope and nature

Jurisdiction vested in the High Court under article 227 is a revisional jurisdiction and, accordingly, no Letters Patent Appeal is competent from an order passed by a single Judge in exercise of such jurisdiction; *Sushilabai* v. *Nihalchand*, (1993) Supp 1 SCC 11, paragraph 4; *R.D. CCB* v. *Dinkar*, (1993) Supp 1 SCC 9, paragraph 3.

This power (power under article 227) does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the court of tribunal; *Nizzar* v. *Varghese*, AIR 1992 Ker 312.

The High Court would not interfere with a finding of fact, within the jurisdiction of the inferior tribunal, except where it is perverse or not based on any material whatever, or the conclusion arrived at is such that no reasonable tribunal could possibly have come to, or it has resulted in manifesting injustice; *Mani* v. *Phiroz*, AIR 1991 SC 1492, paragraph 16.

Reasons

Where a statutory appellate tribunal brushes aside the well-reasoned order of the primary statutory authority, on conjectures and without giving cogent reasons, there is an error apparent on the record, and the High Court may interfere; *State of West Bengal* v. *Atul*, (1991) Supp 1 SC 414, paragraph 11.

Jurisdictional defects

Relief under article 227 is granted against inferior tribunals where the tribunal decides wrongly, a question as to its own jurisdiction; *Ram Prasad* v. *S.T.A.T.*, AIR 1993 MP 92, paragraph 7 (DB).

1. Clause (5) was ins. by the Constitution (Forty-second Amendment), Act, 1976, sec. 40 (w.e.f. 1-2-1977) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978. sec. 31 (w.e.f. 20-6-1979).

Locus standi

Any person who is likely to be affected by the impugned order, even though he has no present interest in the property, is entitled to make an application under article 227. In the case of a public injury, even a neighbour has been allowed to apply; *Sarada* v. *Shakuntala*, AIR 1991 AP 20, paragraph 9.

228. Transfer of certain cases to High Court.—If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, [1][it shall withdraw the case and [2][***] may—].

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

[3][**228A. Special provisions as to disposal of question relating to constitutional validity of State Laws.**—*[Rep. by the Constitution (Forty-third Amendment) Act, 1977, sec. 10, (w.e.f. 13-4-1978).]]*

229. Officers and servants and the expenses of High Courts.—(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State [4][***] may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State [5][***].

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

Notes on Article 229

Rule made under article 229 (1) and (2) proviso must be observed. An appointment made by the

---

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 41, for "it shall withdraw the case and may—" (w.e.f. 1-2-1977).
2. The words, figure and letter, "subject to the Provisions of article 131A", omitted by the Constitution (Forty-third Amendment) Act, 1977, sec. 9 (w.e.f. 13-4-1978).
3. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 42 (w.e.f. 1-2-1977).
4. The words "in which the High Court has its principal seat" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
5. Certain words omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

Chief Justice without consulting the Public Service Commission is not proper; *H.C. Puttaswamy A.* v. *Chief Justice of Karnataka High Court*, AIR 1991 SC 295.

[1][**230. Extension of jurisdiction of High Courts to Union territories.**—(1) Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.

(2) Where the High Court of a State exercises jurisdiction in relation to a Union territory:—

(a) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction; and

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President.

231. Establishment of a common High Court for two or more States.—(1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

(2) In relation to any such High Court,—

(a) the reference in article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction;

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts, be construed as a reference to the Governor of the State in which the Subordinate Courts are situate; and

(c) the reference in articles 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat:

Provided that if such principal seat is in a Union territory, the references in articles 210 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India.]

232. [Omitted vide Constitution (Seventh Amendment) Act, 1956.]

CHAPTER VI — SUBORDINATE COURTS

233. Appointment of district judges.—(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

[2][**233A. Validation of appointments of, and judgments, *etc.*, delivered by, certain district judges.**—Notwithstanding any judgment, decree or order of any court,—

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 16, for articles 230, 231 and 232.
2. Ins. by the Constitution (Twentieth Amendment) Act, 1966, sec. 2.

(a) (i) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State, and
(ii) no posting, promotion or transfer of any such person as a district judge, made at any time before the commencement of the Constitution (Twentieth Amendment) Act, 1966, otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions;

(b) no jurisdiction exercised, no judgment, decree, sentence or order passed or made, and no other act or proceeding done or taken, before the commencement of the Constitution (Twentieth Amendment) Act, 1966 by, or before, any person appointed, posted, promoted or transferred as a district judge in any State otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or invalid or ever to have become illegal or invalid by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions.]

234. Recruitment of persons other than district judges to the judicial service.—Appointment of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

235. Control over subordinate courts.—The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

Notes on Article 235

The leading cases on article 235 are the following:—

(i) *State of Assam* v. *Ranga Mohammed*, AIR 1967 SC 903.
(ii) *Shamsher* v. *State of Punjab*, AIR 1974 SC 2192.
(iii) *Tej Pal* v. *State of Uttar Pradesh*, (1985) 3 SCC 604.

All these cases elucidate the expressed 'Control' in article 235.

The 'Control' vested in the High Court is a mechanism to ensure independence of the subordinate judiciary; *High Court of Judicature at Bombay* v. *Shirish Kumar Rangrao Patil*, AIR 1997 SC 2637.

236. Interpretation.—In this Chapter—

(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

Notes on Article 236

See *All India Judges Association* v. *Union of India*, AIR 1992 SC 165, paragraphs 12-14.

237. Application of the provisions of this Chapter to certain class or classes of magistrates.—The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

PART VII.—The States in Part B of the First Schedule.—[*Rep. by the Constitution (Seventh Amendment Act) 1956, sec. 29 and Sch.*]

PART VIII

[1][THE UNION TERRITORIES]

[2][239. Administration of Union territories.—(1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

[3][239A. Creation of local Legislatures or Council of Ministers or both for certain Union territories.—(1) Parliament may by law create [4][for the Union territory of Pondicherry]—

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(b) a Council of Ministers, or both with such Constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.

[5][239AA. Special provisions with respect to Delhi.—(1) As from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991, the Union

---

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 17 for the heading "THE STATES IN PART C OF THE FIRST SCHEDULE".
2. Subs. by sec. 17, Constitution (Seventh Amendment) Act, 1956, for articles 239 and 240.
3. Ins. by the Constitution (Fourteenth Amendment) Act, 1962, sec. 4.
4. Subs. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987), sec. 63, for "for any of the Union territories of Goa, Daman and Diu and Pondicherry" (w.e.f. 30-5-1987).
5. Ins. by the Constitution (Sixty-ninth Amendment) Act, 1991, sec. 2 (w.e.f. 1-2-1992).

territory of Delhi shall be called the National Capital Territory of Delhi (hereafter in this Part referred to as the National Capital Territory) and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor.

(2) (a) There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

(b) The total number of seats in the Legislative Assembly, the number of seats reserved for Scheduled Castes, the division of the National Capital Territory into territorial constituencies (including the basis for such division) and all other matters relating to the functioning of the Legislative Assembly shall be regulated by law made by Parliament.

(c) The provisions of articles 324 to 327 and 329 shall apply in relation to the National Capital Territory, the Legislative Assembly of the National Capital Territory and the members thereof as they apply, in relation to a State, the Legislative Assembly of a State and the members thereof respectively; and my reference in articles 326 and 329 to "appropriate Legislature" shall be deemed to be a reference to Parliament.

(3) (a) Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2, and 18.

(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof.

(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void:

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory:

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.

(4) There shall be a Council of Ministers consisting of not more than ten per cent. of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion:

Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to given such direction in the matter as he deems necessary.

(5) The Chief Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the President.

(6) The Council of Ministers shall be collectively responsible to the Legislative assembly.

[1][(7) (a) Parliament may, by law, make provisions for giving effect to, or supplementing the provisions contained in the foregoing clauses and for all matters incidental or consequential thereto.

[2][(b) Any such law as is referred to in sub-clause (a) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending, this Constitution.]

(8) The provisions of article 239B shall, so far as may be, apply in relation to the National Capital Territory, the Lieutenant Governor and the Legislative Assembly, as they apply in relation to the Union territory of Pondicherry, the administrator and its Legislature, respectively; and any reference in that article to "clause (1) fo article 239A" shall be deemed to be a reference to this article or article 239AB, as the case may be.

239AB. Provisions in case of failure of constitutional machinery.—If the President, on receipt of a report from the Lieutenant Governor or otherwise, is satisfied—

(a) that a situation has arisen in which the administration of the National Capital Territory cannot be carried on in accordance with the provisions or article 239AA or of any law made in pursuance of that article; or

(b) that for the proper administration of the National Capital Territory it is necessary or expedient so to do,

the President may by order suspend the operation of any provision of article 239AA or of all or any of the provisions of any law made in pursuance of that article for such period and subject to such conditions as may be specified in such law and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the National Capital Territory in accordance with the provisions of article 239 and article 239AA].

[3][**239B. Power of administrator to promulgate Ordinances during recess of Legislature.**—(1) If at any time, except when the Legislature of [4][the Union territory of

1. Subs. by the Constitution (Seventieth Amendment) Act, 1992 sec. 3 for "(7)" (w.e.f. 21-12-1991).
2. Ins. by the Constitution (Seventieth Amendment) Act, 1992 sec. 3 (w.e.f. 21-12-1991).
3. Ins. by the Constitution (Twenty-seventh Amendment) Act, 1971, sec. 3 (w.e.f. 30-12-1971).
4. Subs. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987), sec. 63, for "a Union territory referred to in clause (1) of article 239A" (w.e.f. 30-5-1987).

Pondicherry] is in session, the administrator thereof is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Provided that no such Ordinance shall be promulgated by the administrator except after obtaining instructions from the President in that behalf:

Provided further that whenever the said legislature is dissolved, or its functioning from the President shall be deemed to be an Act of the Legislature of the Union territory which has been duly enacted after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of article 239A, the administrator shall not promulgate any Ordinance during the period of such dissolution or suspension.

(2) An Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the Union territory which has been duly enacted after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of article 239A, but every such Ordinance—

(a) shall be laid before the Legislature of the Union territory and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature or if, before the expiration of that period, a resolution disapproving it is passed by the Legislature, upon the passing of the resolution; and

(b) may be withdrawn at any time by the administrator after obtaining instructions from the President in that behalf.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the Union territory made after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of article 239A, it shall be void.]

[1][***]

240. Power of President to make regulations for certain Union territories.—(1) The President may make regulations for the peace, progress and good Government of the Union territory of—

(a) the Andaman and Nicobar Islands;

[2][(b) Lakshadweep;]

[3][(c) Dadra and Nagar Haveli;]

[4][(d) Daman and Diu;]

[5][(e) Pondicherry;]

---

1. Clause (4) was ins. by the Constitution (Thirty-eighth Amendment) Act, 1975 sec. 4 (retrospectively) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 32 (w.e.f. 20-6-1979).
2. Subs. by the Laccadive, Minicoy and Amindivi Islands (Alteration of name) Act, 1973), sec. 4, for entry (b) (w.e.f. 1-11-1973).
3. Ins. by the Constitution (Tenth Amendment) Act, 1961, sec. 3.
4. Subs. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987), sec. 63, for entry (d) (w.e.f. 30-5-1987). Entry (d) was ins. by the Constitution (Twelfth Amendment) Act, 1962, sec. 3.
5. Ins. by the Constitution (Fourteenth Amendment) Act, 1962 secs. 5 and 7 (w.e.f. 16-8-1962).

[1][***]

[2][***]

[3][Provided that when any body is created under article 239A to function as a Legislature for the [4][Union territories of [5][Pondicherry]], the President shall not make any regulation for the peace, progress and good Government of that Union territory with effect from the date appointed for the first meeting of the Legislature:]

[6][Provided further that whenever the body functioning as a Legislature for the Union territory of [7][Pondicherry] is dissolved, or the functioning of that body as such Legislature remains suspended on account of any action taken under any such law as is referred to in clause (1) of article 239A, the President may, during the period of such dissolution or suspension, make regulations for the peace, progress and good Government of that Union territory.

(2) Any regulation so made may repeal or amend any Act made by Parliament or [8][any other law] which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory.]

241. High Courts for Union territories.—(1) Parliament may by law constitute a High Court for a [9][Union territory] or declare any court in any [10][such territory] to be a High Court for all or any of the purposes of this Constitution.

(2) The provisions of Chapter V of Part VI shall apply in relation to every High Court referred to in clause (1) as they apply in relation to a High Court referred to in article 214 subject to such modifications or exceptions as Parliament may by law provide.

[11][(3) Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, in relation to any Union territory shall continue to exercise such jurisdiction in relation to that territory after such commencement.

---

1. The Entry (f) relating to Mizoram Omitted by the State of Mizoram Act, 1986 (34 of 1986), sec. 39 (w.e.f. 20-2-1987).
2. The entry (g) relating to Arunanchal Pradesh omitted by the State of Arunachal Pradesh Act, 1986 (69 of 1986), sec. 42 (w.e.f. 20-2-1987).
3. Ins. by the Constitution (Fourteenth Amendment) Act, 1962 sec. 5.
4. Subs. by the Constitution (Twenty-seventh Amendment) Act, 1971, sec. 4, for "Union territory of Goa, Daman and Diu or Pondicherry" (w.e.f. 15-2-1972).
5. Subs. by the Goa, Damana and Diu Reorganisation Act, 1987 (18 of 1987), sec. 63 for "Goa, Daman and Diu or Pondicherry" (w.e.f. 30-5-1987).
6. Ins. by the Constitution (Twenty-seventh Amendment) Act, 1971, sec. 4 (w.e.f. 15-2-1972).
7. Subs. by the Goa, Damana and Diu Reorganisation Act, 1987 (18 of 1987), sec. 63 for "Goa, Daman and Diu or Pondicherry" (w.e.f. 30-5-1987).
8. Subs. by the Constitution (Twenty-seventh Amendment) Act, 1971, sec. 4 for "any existing law" (w.e.f. 15-2-1972).
9. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for "State specified in Part C of the First Schedule".
10. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. for "such State".
11. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. for clauses (3) and (4).

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court for a State to, or from, any Union territory or part thereof.]

Notes on Article 241

By virtue of article 241 read with article 214 subject to Parliamentary modificatious High Court for a Union territory has the same status as High Court for a State (a) as it is a Court of record, (b) its judge is eligible for appointment as a Supreme Court judge; *Deen Dayal* v. *Union of India*, AIR 1991 AP 307 paragraphs 7-8.

242. Coorg.—[*Rep. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.*]

The territories in Part D of the First Schedule and other territories not specified in that Schedule.—*[Rep. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.]*

[1][*PART IX*

THE PANCHAYATS

243. Definitions.—In this Part, unless the context otherwise requires,—

(a) 'district' means a district in a State;

(b) 'Gram Sabha' means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;

(c) 'intermediate level' means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;

(d) 'Panchayat' means an institution (by whatever name called) of self-government constituted under article 243B , for the rural areas;

(e) 'Panchayat area' means the territorial area of a Panchayat;

(f) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published;

(g) 'village' means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

243A. Gram Sabha.—A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may by law, provide.

243B. Constitution of Panchayats.—(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

243C. Composition of Panchayats.—(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

---

1. PART IX.—The territories in Part D of the First Schedule and other territories not specified in that Schedule was rep. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. and ins. by the Constitution (Seventy-third Amendment) Act, 1992, sec. 2.

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State,

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation—

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) if the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within—

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of—

(a) Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level, shall be elected by, and from amongst, the elected members thereof.

243D. Reservation of seats.—(1) Seats shall be reserved for—

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the, total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging, to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334 .

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

243E. Duration of Panchayats, *etc.*—(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed—

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

243F. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that be is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

243G. Powers, authority and responsibilities of Panchayats.—Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to—

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

243H. Powers to impose taxes by, and funds of, the Panchayats.—The Legislature of a State may, by law,—

(a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom,

as may be specified in the law.

243I. Constitution of finance Commissions to review financial position.—(1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to—

(a) the principles which should govern—

(i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats;

(iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Panchayats;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

(2) The Legislature of a State may, by law, provide for the composition of the Commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.

(3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them,

(4) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

243J. Audit of accounts of Panchayats.—The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts.

243K. Elections to the Panchayats.—The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

243L. Application to Union territories.—The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under 239 and references to the Legislature or the Legislative Assembly of a State were references, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

243M. Part not to apply to certain areas.—(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.

(2) Nothing in this Part shall apply to—

(a) the States of Nagaland, Meghalaya and Mizoram;

(b) the Hill areas in the State of Manipur for which District Councils exist under any law for the time being in force.

(3) Nothing in this Part—

(a) relating to Panchayats at the district level shall apply to the Hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;

(b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

[1][(3A) Nothing in article 243D, relating to reservation of seats for the Scheduled Castes, shall apply to the State of Arunachal Pradesh.]

(4) Notwithstanding anything in this Constitution—

(a) the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that house present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243N. Continuance of existing laws and Panchayats.—Notwithstanding anything in this Part, any provision of any law relating to Panchayats in force in a State immediately before commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed by a competent Legislature, other competent authority or until the expiration of one year from such commencement whichever is earlier:

Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each house of the Legislature of that State.

243O. Bar to interference by courts in electoral matters.—Notwithstanding anything in this Constitution—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the legislature of a State.

Notes on Article 243-O

Election process (Gram Panchayats)

Once the election process has started, the High Court cannot—

(a) direct the election officer to stall the proceedings or to conduct the election process afresh or

1. Ins. by the Constitution (Eighty-third Amendment) Act, 2000, sec. 2 (w.e.f. 8-9-2000).

(b) direct him not to declare the result of the election of the gram Panchayat, or

(c) direct him to conduct a fresh poll for 20 persons.

B. Krishnaiah v. *State Election Commission, Andhra Pradesh*, AIR 1996 SC 1595, paragraphs 11, 12.

[1][*PART IX A*
THE MUNICIPALITIES

243P. Definitions.—In this Part, unless the context otherwise requires,—

(a) 'Committee' means a Committee constituted under article 243S;

(b) 'district' means a district in a State;

(c) 'Metropolitan area' means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be Metropolitan area for the purposes of this Part;

(d) 'Municipal area' means the territorial area of a Municipality as is notified by the Governor;

(e) 'Municipality' means an institution of self-government constituted under Article 243Q ;

(f) 'Panchayat' means a Panchayat constituted under Article 243B;

(g) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published.

243Q. Constitution of Municipalities.—(1) There shall be constituted in every State,—

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

243R. Composition of Municipalities.—(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the

1. Ins. by the Constitution (Seventy-third Amendment) Act, 1992, sec. 2.

territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide—

(a) for the representation in a Municipality of—

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered electors within tile Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.

243S. Constitution and composition of wards Committees, *etc.*—(1) There shall be constituted Wards Committees, consisting of one or more Wards, within the territorial area of a Municipality having a population of three lakhs or more.

(2) The Legislature of a State may, by law, make provision with respect to—

(a) the composition and the territorial area of a Wards Committee;

(b) the manner in which the seats in a Wards Committee shall be filled.

(3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

(4) Where a Wards Committee consists of—

(a) one ward, the member representing that ward in the Municipality; or

(b) two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee,

shall be the Chairperson of that Committee.

(5) Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the Constitution of Committees in addition to the Wards Committees.

243T. Reservation of seats.—(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334 .

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

243U. Duration of Municipalities, *etc*.—(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to Constitute a Municipality shall be completed,—

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would leave continued. under, clause (1) had it not been so dissolved.

243V. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being a member of a Municipality—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age, of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

243W. Powers, authority and responsibilities of Municipalities, *etc.*—Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

243X. Power to impose taxes by, and funds, of, the Municipalities.—The Legislature of a State may, by law—

(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State-Government for such purposes and subject to such conditions and limits;

(c) provide for making, such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received. respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom,

as may be specified in the law.

243Y. Finance Commission.—(1) The Finance Commission constituted under article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor as to—

(a) the principles which should govern—

(i) the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;

(iii) the grants-in-aid to the Municipalities from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Municipalities;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.

(2) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

243Z. Audit of accounts of Municipalities.—The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

243ZA. Elections to the Municipalities.—(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(2) Subject to provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

243ZB. Application to Union territories.—The Provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

243ZC. Part not to apply to certain areas.—(1) Nothing in this Part shall apply to the Scheduled Areas referred to in Clause (1), and the tribal areas referred to in Clause (2), of article 244.

(2) Nothing in this part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.

(3) Notwithstanding anything in this Constitution, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the Tribal Areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243ZD. Committee for district planning.—(1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislative of a State may, by law, make provision with respect to—

(a) the composition of the District Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;

(c) the functions relating to district planning which may be assigned to such Committees;

(d) the manner in which the Chairpersons of such Committees be chosen.

(3) Every District Planning Committee shall, in preparing the draft development plan,—

(a) have regard to—

(i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrate development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organizations as the Governor may, by order, specify.

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZE. Committee for Metropolitan Planning.—(1) There shall be constituted in every Metropolitan, area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

(2) The Legislature of a State may, by law, make with respect to—

(a) the composition of the Metropolitan Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the, Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;

(c) the representation, in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

(d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;

(e) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every Metropolitan Planning Committee shall, in preparing the draft development plan,—

(a) have regard to—

(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

(ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the Government of India and the Government of the State;

(iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZF. Continuance of existing laws and Municipalities.—Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

243ZG. Bar to interference by courts in electoral matters.—Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question expect by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

PART X

THE SCHEDULED AND TRIBAL AREAS

244. Administration of Scheduled Areas and Tribal Areas.—(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State [1][***] other than the [2][States of Assam [3][[4][Meghalaya, Tripura and Mizoram]]].

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in [2][the State of Assam, [3][[5][Meghalaya, Tripura and Mizoram]]].

---

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Subs. by the North Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71, for "the State of Assam" (w.e.f. 21-1-1972).
3. Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 2, for "and Meghalaya" (w.e.f. 1-4-1985).
4. Subs. by the State of Mizoram Act, 1986 (34 of 1986), sec. 39, for "Meghalaya and Tripura" (w.e.f. 20-2-1987).
5. Subs. by the State of Mizoram Act, 1986 (34 of 1986), sec. 39, for "Meghalaya and Tripura and the Union Territory of Mizoram" (w.e.f. 20-2-1987).

[1][**244A. Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefor.**— (1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of the tribal areas specified in [2][Part I] of the table appended to paragraph 20 of the Sixth Schedule and create therefor—

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous State, or

(b) a Council of Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) may, in particular,—

(a) specify the matters enumerated in the State List or the Concurrent List with respect to which the Legislature of the autonomous State shall have power to make laws for the whole or any part thereof, whether to the exclusion of the Legislature of the State of Assam or otherwise;

(b) define the matters with respect to which the executive power of the autonomous State shall extend;

(c) provide that any tax levied by the State of Assam shall be assigned to the autonomous State in so far as the proceeds thereof are attributable to the autonomous State;

(d) provide that any reference to a State in any article of this Constitution shall be construed as including a reference to the autonomous State; and

(e) make such supplemental, incidental and consequential provisions as may be deemed necessary.

(3) An amendment of any such law as aforesaid in so far as such amendment relates to any of the matters specified in sub-clause (a) or sub-clause (b) of clause (2) shall have no effect unless the amendment is passed in each House of Parliament by not less than two-thirds of the members present and voting.

(4) Any such law as is referred to in this article shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.]

---

1. Ins. by the Constitution (Twenty-second Amendment) Act, 1969, sec. 2.
2. Subs. by the North Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71, for "Part A" (w.e.f. 21-1-1972).

PART XI

RELATIONS BETWEEN THE UNION AND THE STATES

CHAPTER I — LEGISLATIVE RELATIONS

Distribution of Legislative Powers

245. Extent of laws made by Parliament and by the Legislatures of States.—(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Notes on Article 245

Legislative powers of Parliament and State Legislatures; Limitations

Legislative power under the Indian Constitution is subject to the following limitations:—

(a) The federal scheme of distribution of legislative powers.

(b) Fundamental rights and other provisions of the Constitution, as to what laws can be passed.

(c) Constitutional provisions as to prior sanction or subsequent approval of the President or Governor in respect of certain Bills.

(d) The rule that a State Legislature cannot legislate extra-territorially—though Parliament does not suffer from this limitation, by virtue of article 245(2).

(e) The doctrine that the Legislature cannot delegate matters of policy.

(f) The doctrine that the legislation must not be a fraud on the Constitution.

(g) The doctrine that the legislature must make a 'law'. Its function is not adjudicatory nor executive, but only legislative.

Limitation (a) above flows from article 246.

Limitation (b) above flows from articles 12 and 13.

Limitation (c) above flows (i) from the general doctrine that all authority and power must be exercised in conformity with the Constitution, and (ii) from the words 'Subject to the provisions of this Constitution' in article 245(1).

Limitation (d) above flows from the words 'for the whole or any of the State' in article 245(1) (as regards state Legislatures). *See* the undermentioned cases:

(i) *State of Bihar* v. *Charusila*, AIR 1959 SC 1002.

(ii) *Tata Iron & Steel Co.* v. *State of Bihar*, AIR 1958 SC 452.

Limitation (e) above flows from the general principle that power given to a body by the Constitution must, in its essentials, be exercised by that body only.

Limitation (f) flows from another principle that all constitutional and statutory powers must be exercised for the purpose for which they are intended. This aspect has been discussed exhaustively in; *D.C. Wadhwa* v. *Union of India*, AIR 1987 SC 579, *See* also *Poona Municipality* v. *Dattatraya*, AIR 1965 SC 555.

Limitation (g) above flows from interpretation of the word 'law' occurring in article 245(1), which confers the power to make 'laws'. On this point, *see* the undermentioned cases:

(i) *Basanta* v. *Emperor*, AIR 1944 FC 86.

(ii) *Indira* v. *Raj Narain*, AIR 1975 SC 2299.

(iii) *Mishri Lal* v. *State of Orissa*, AIR 1977 SC 1686.

(iv) *Government of Andhra Pradesh* v. *H.M.T.*, AIR 1975 SC 2037.

(v) *City of Ahmedabad* v. *New Shorrack Spinning*, AIR 1970 SC 119.

(vi) *Tirath Ram* v. *State of Uttar Pradesh*, AIR 1973 SC 405.

Conditional legislation

Where an authority is empowered to exercise the power of conditional legislation, then the duty to hear affected parties does not exist, if the delegate has to act on subjective satisfaction. But such duty exists if he has to be objectively satisfied; *State of Tamil Nadu* v. *K. Sabanayagam*, AIR 1998 SC 344.

Excessive delegation

Where the rule—making authority gives to itself the power to prescribe criteria and procedure for certain specific situations, there is no question of excessive delegation. (In fact, there is no delegation at all, in such cases); *Arun Tiwari* v. *Zila Mansui Shikshak Sangh*, AIR 1998 SC 331.

For the meaning and scope of delegated legislation see *Agricultural Market Committee* v. *Shalimar Chemical Works*, AIR 1997 SC 2502.

The power to alter the applicability of the Act, by amending the Schedule, according to the change in local conditions, may be delegated, provided standards for guidance are provided in the Act; *Kishan* v. *State of Rajasthan*, AIR 1990 SC 2269, paragraph 4.

The Legislature may leave it to the judgment of a local administrative body as to the necessity of applying or introducing the Act in a local area, or the determination of a contingency or even, upon the happening of which the legislative provisions are made to operate; this is known as conditional legislation; *Orient Paper* v. *State of Orissa*, AIR 1991 SC 672, paragraphs 27-29.

Incidental provisions

While enacting a law in exercise of a particular legislative power, the legislature may make all incidental and ancillary provisions to make the law effective, but it would not extend to purposes which are not ancillary; *T.E.S.C.* v. *State of Assam*, AIR 1990 SC 123, paragraph 129.

But taxation is not an ancillary power and cannot be deduced from a regulatory law; *Synthetics & Chemicals Ltd.* v. *State of Uttar Pradesh*, AIR 1990 SC 1927.

Limits

In a federal Constitution, transgression of its limits of power by a legislature may be (i) open, direct and overt, or (ii) disguised, indirect and covert. The latter is called 'colourable legislation. Entries in the seventh Schedule should be construed so as to avoid conflict. On applying this test the Expenditure Tax Act is not colourable legislation. It is within the competence of Parliament; F*ederation of Hotel and Restaurant* v. *Union of India*, AIR 1990 SC 1637.

Motive

If the legislature is competent to make a particular law, its motive in enacting it, or the fact that the law would operate harshly on some persons, or that it failed to enact a connected legislation, is irrelevant; *Ashok* v. *Union of India*, AIR 1991 SC 1792, paragraph 6.

Legislation affecting judicial decisions

Legislation which seeks to do away with judgments, decrees and order of any court is impermissible and is unconstitutional and void; *S.R. Bhagwat* v. *State of Mysore*, AIR 1996 SC 188, paragraphs 10, 18. [Case relating to section 11(2), Karnataka Regulation of Pay *etc.* Act, 1973].

Sub judice

If a legislature has the power to amend a provision, there is nothing colourable if it uses that power during the pendency of a writ petition challenging the validity of that provision in order to avoid possible adverse verdict in that writ petition; *Hotel Balaji* v. *State of Andhra Pradesh*, AIR 1993 SC 1048, paragraph 32.

Legislation overriding decision

Legislature can render a judicial decision by enacting a valid law—even retrospectively. But it cannot declare a particular judgment of the court as invalid as that would amount to exercise of judicial power; *S.S. Boto* v. *B.D. Sardana*, AIR 1997 SC 3127.

Legislation as will of the people

An Act of the legislature represents the will of the people and cannot be lightly declared as unconstitutional; *State of Bihar* v. *Bihar Distillery Ltd.*, AIR 1997 SC 1811 paragraph 18.

Validating Act

Legislature may validate an unlawful executive Act, including an unauthorised assessment of tax, and with retrospective effect, subject to constitutional limitation; *Yadlapati* v. *State of Andhra Pradesh*, AIR 1991 SC 704, paragraph 7.

246. Subject-matter of laws made by Parliament and by the Legislatures of States.—(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State [1][***] also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State [1][***] has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [2][in a State] notwithstanding that such matter is a matter enumerated in the State List.

Notes on Article 246

Doctrine of pith and substance

In no field of constitutional law is the comparative approach more useful than in regard to the doctrine of pith and substance. This is a doctrine which has come to be established in India and derives its genesis from the approach adopted by the courts (including the Privy Council) in dealing with controversies arising in other federations. Briefly stated, what the doctrine means is this. Where the question arises of determining whether a particular law relates to a particular subject

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for "in Part A or Part B of the First Schedule".

mentioned in one list or another, the court looks to the substance of the matter. Thus, if the substance falls within Union List, then the incidental encroachment by the law on the State List does not make it invalid. This principle had come to be established by the Privy Council when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. In India, the doctrine came to be established in the pre-independence period under the Government of India Act, 1935. The classical example is the Privy Council judgment in *Prafulla* v. *Bank of Commerce*, AIR 1946 PC 60, holding that a State law dealing with money lending (a State subject) is not invalid merely because it incidentally affects promissory notes (Union List, entry 46). The doctrine is sometimes expressed in terms of ascertaining the true character of legislation and it is also emphasised that the name given by the Legislature to the legislation in the short title is immaterial. Again, for applying the doctrine of pith and substance, regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions—

The undermentioned decisions illustrate the above proposition:

(i) *Southern Pharmaceuticals* v. *State of Kerala*, AIR 1981 SC 1865, paragraph 15 (Incidental encroachment to be disregarded).

(ii) *Prem* v. *Chhabra*, (1984) 2 SCC 302, paragraph 8.

(iii) *State of Rajasthan* v. *Chawla*, AIR 1959 SC 544, 547.

(iv) *Amar Singh* v. *State of Rajasthan*, (1955) 2 SCR 803 (extent of invasion immaterial).

(v) *D.C.G.M.* v. *Union of India*, AIR 1983 SC 937, paragraph 33 (Incidental encroachment immaterial).

Co-operative Society

Under State List, Entry 32, legislation can be passed for providing for nomination by Government of the Chairman and members of the Committee of Management of cooperative societies. It is open to the State to legislate on any or all aspects of cooperative societies including their managements; *Sheetal Prasad Gupta* v. *State*, AIR 1990 Pat 81, paragraph 24 (FB).

Legislative list: Entries

Entries in the legislative lists are to be construed according to pith and substance. Bombay Money-Lenders Act, 1946 is enacted under the State List, Entry 30 relating to "Money-lending and money-lenders; relief of agricultural indebtedness". It does not fall within Union List, Entry 46 (Bills of Exchange, *etc.*); *Bhanushankar* v. *Kamal Tara Builders*, AIR 1990 Bom 140, 141 (DB).

As observed by the; Supreme Court in *Ujagar Prints* v. *Union of India*, AIR 1989 SC 516 paragraph 23:

> Entries in the legislative lists, it may be recalled, are not sources of the legislative power, but are merely topics or fields or legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The expression with respect to article 246 brings in the doctrine of pith and substance in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised, the test is whether the legislation looked at as a whole is substantially with respect to the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic.

Entry of goods

State Legislature cannot levy taxes on the entry of goods into local area which are not meant for consumption, use or sale therein. If in the exercise of its authority, the State Legislature uses wide words, such words are construed in such a manner that it is held that the State Legislature had

intended to restrict those words and phrases in their meaning within the parameters of the competence of the State Legislature. The State Legislature cannot empower municipal committees to levy tax, only on the entry of goods within the local areas, when those goods are not meant for consumption, sale or use within that area; *Indian Oil Corporation* v. *Municipal Corporation*, AIR 1990 P&H 99.

Essential commodities

Our legislation in relation to essential commodities illustrates the position. What is an essential commodity has to be determined not merely from the terms of the Essential Commodities Act, 1955, but also with reference to section 2(a)(xi) read with notifications issued thereunder from time to time, section 2(a)(xi) provides as under:

> Any other class of commodity which the Central Government may, by notified order declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule of the Constitution.

Thus, for determining the scope of the Act, one has to refer to the entry in this Constitution relating to the subject. Now, the Constitution, in the Concurrent List, Entry 33, provides as under:

Trade and Commerce in, and the production, supply and distribution of,—

> The products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products.

It may further be mentioned that section 2 of the Industries (Development and Regulation) Act, 1951 declares that it is expedient in the public interest that the Union should take under its control the commodities specified in the schedule to the Act, which includes cement. On this basis the Delhi High Court in *Trans Yamuna Cement Dealers Association* v. *Governor of Delhi*, AIR 1988 Del 247, has held that the Delhi Cement and Licensing and Control Order, 1982 is valid.

Mala fides

Under the unamended Income Tax Act, 1961 the Legislature had already classified Income Tax Officer into grades and given power to Government to appoint and sanction their appointments. The amendment of 1987 redesignated these posts and made certain other provisions. It was held that it can hardly be argued that the amended Act was passed *mala fide* to destroy the cause of action in the present petitions. This is apart from the fact that no legislation can be challenged on the ground that it is *mala fide*; *Hundraj Kanyalal Sajnani* v. *Union of India*, AIR 1990 SC 1106.

Mines

Union List, Entry 54 reads "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. Such a law was passed in 1957—The Mines and Minerals (Regulation and Development) Act, 1957. The Act of 1957 covers all mineral oils, including minor. State List, Entry 23 reads—"Regulation of mines and mineral development, subject to the provisions of List I with respect to regulation and development under the control of the Union". Any legislation by the State after such declaration by Parliament is unconstitutional, because that field is abstracted from the legislative competence of the State Legislature; *Nanganayaka* v. *State of Karnataka*, AIR 1990 Kant 97, 103, 104, paragraphs 10-13. *See* the undermentioned cases:

(i) *Baijnath* v. *State of Bihar*, AIR 1970 SC 1436, 1443, 1444, 1445 (reviews case law).

(ii) *State of Tamil Nadu* v. *Hind Stones*, AIR 1981 SC 711.

Preventive detention

With reference to legislative entries relating to preventive detention (Union List, Entry 9 and Concurrent List 1, Entry 3) the expressions (i) 'security of State' and 'security of India' are different expressions. It has been held that Parliament can enact legislation for preventive detention of smugglers (COFEPOSA) and for the forfeiture of assets obtained by smuggling; *Attorney-General of India* v. *Amratlal Pranjivanlal*, JT (1994) 3 SC 583.

Stamp duties

Article 25(b) of the Bombay Stamp Act, 1958 (as amended in 1985), which levies stamp duty on documents of transfer of shares in co-operative societies, falls within concurrent list, entry 44 (Stamp duties—but not including rates of stamp duty and State List, Entry 63) Rates of stamp duty in respect of document other than those specified in the provision of List 1 with regard to rates of stamp duty. It is therefore within the competence of the State Legislature. In any case the Act has received the assent of President and its validity cannot be questioned. *See* the undermentioned cases:

Hanuman Vitamin Foods v. *State*, AIR 1990 Bom 204, 207, 208, paragraphs 5 and 6 (DB) following; *Bar Council of Uttar Pradesh* v. *State of Uttar Pradesh*, AIR 1973 SC 231, paragraph 12.

Preventive detention

Construing Union List, Entry 66, Supreme Court has held that the University. Grants Commission has jurisdiction to coordinate and maintain standards of higher education. The Regulation of 1991, made under section 26 of the University Grants Commission Act, 1956 regarding qualifications for teachers was held to be valid; *University of Delhi* v. *Raj Singh*, JT (1994) 6 SC 1.

Pith and substance

No question of conflict between two lists will arise if the impugned legislation by the application of the doctrine of 'pith and substance' appears to fall exclusively under one list, and the encroachment upon another list is only incidental; *Viswanathiah* v. *State of Karnataka*, (1991) 3 SCC 358, paragraph 9.

Reconciliation

It should be considered whether a fair reconciliation cannot be effected by giving to the language of the Union Legislative List a meaning which, if less wide than it might in another context bear, is yet one that can properly be given to it and equally giving to the language of the State Legislative list a meaning which it can properly bear; *Federation of Hotel and Restaurant* v. *Union of India*, AIR 1990 SC 1637, paragraph 12 (CB).

Effect of declaration

Even when Parliament makes a declaration under Entry 52 of List 1 that the control of a particular industry by the Union is expedient in the public interest, the State Legislature shall retain its power to legislate in regard to the raw materials used in that industry; *Viswanathiah* v. *State of Karnataka*, (1991) 3 SCC 358, paragraph 6 (3 Judge Bench).

Even when Parliament legislates under Entry 7 or 52 of List I, the exclusion of the State Legislature is not total, it would be confined only to those aspects of the industry which are brought under the control of the Union by the relevant legislation; *Orissa Cement Co.* v. *State*, (1991) Supp 1 SCC 430, paragraphs 42 and 43.

Effect of the words 'subject to'

When one Entry is made subject to another Entry, it means that out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specially dealt with by the appropriate Legislature; *Mahabir* v. *State*, AIR 1991 Pat 40, paragraph 46.

Industries

The power of the State Legislature as regards industries other than those falling under the Union List is exclusive; *Viswanathiah* v. *State of Karnataka*, (1991) 3 SCC 358, paragraphs 6 and 8.

247. Power of Parliament to provide for the establishment of certain additional courts.—Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

248. Residuary powers of legislation.—(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

249. Power of Parliament to legislate with respect to a matter in the State List in the national interest.—(1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein:

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.—(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have, power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

251. Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States.—Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.—(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

Notes on Article 252

The article makes it possible for Parliament to make such laws relating to State subjects as regards such States whose legislatures empower Parliament in this behalf by resolutions. Passing of the resolutions is a condition precedent for vesting the power in Parliament.

When only a distinct and separate part of a State Entry is transferred by the resolutions, the State Legislatures do not lose their power to legislate with respect to the rest of that Entry; *Krishna* v. *Land Tribunal*, AIR 1993 SC 883, paragraph 3.

253. Legislation for giving effect to international agreements.—Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State [1][***] with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

Notes on Article 254

The operation of article 254 is not complex. The real problem that in practice arises is the problem of determining whether a particular State law is repugnant to a Central Act. A number of judicial decisions (noted below) give guidance as to when repugnancy arises. The important rulings are:

(i) *Zaverbhai* v. *State of Bombay*, AIR 1954 SC 752.
(ii) *Tika Ramji* v. *State of Uttar Pradesh*, (1956) SCR 393.
(iii) *Municipal Corporation* v. *Shiv Shankar*, AIR 1971 SC 815.
(iv) *Karunanidhi* v. *Union of India*, AIR 1979 SC 898.
(v) *Western Coalfields* v. *Special Area Development*, AIR 1982 SC 697.
(vi) *Raghubir* v. *State of Haryana*, AIR 1981 SC 2037.

Union and State legislation

The scheme of distribution of legislative powers under the Indian Constitution—such distribution being a necessary component of a federal political structure—raises interesting issues where the co-existence of Central and State laws in a particular area give rise to litigation. Such problem arises either because the Union or a State may illegally encroach upon the province of the other parallel legislature or it may arise because though there is no encroachment as such on each other's sphere, yet, the two laws clash with each other. The two situations are, strictly speaking, different from each other and they must be judged by two different tests. Where the subject-matter of the legislation in question falls within either the Union List or the State List only, the question is to be decided with reference to legislative competence. One of the two laws must necessarily be void because leaving aside matters in the Concurrent List, the Indian Constitution confers exclusive jurisdiction upon Parliament for matters in the Union List and upon a State Legislature for matters in the State List. The correct doctrine applicable is that of *ultra vires*.

The above is a case of exclusive jurisdiction and since one of the two laws must be void, the question of inconsistency between the two has no application. Only one law will survive and other law will not survive. In contrast, where the legislation passed by the Union and the State is on a subject-matter included in the Concurrent List, then the matter cannot be determined by applying the test of *ultra vires* because the hypothesis is that both the laws are constitutionally valid. In such a case, the test to be adopted will be that or repugnancy under article 254(2). It follows that it is only where the legislation is on a matter in the Concurrent List that it would be relevant to apply the test of repugnancy. Notwithstanding the contrary view expressed by some authors, this is the correct position. Such a view was expressed by Dr. D. Basu in his Commentary on the Constitution of India (1950), page 564 and it is this view that has been upheld by the Supreme Court in the undermentioned decisions:

(i) *Deep Chand* v. *State of Uttar Pradesh*, AIR 1959 SC 648.
(ii) *Premnath* v. *State of Jammu & Kashmir*, AIR 1959 SC 749.
(iii) *Ukha* v. *State of Maharashtra*, AIR 1963 SC 1531, paragraph 20.
(iv) *Bar Council of Uttar Pradesh* v. *State of Uttar Pradesh*, AIR 1973 SC 231, 238.

(v) *Barai* v. *Henry*, 1983 SC 150, paragraph 15.

(vi) *Hoechst* v. *State of Bihar*, AIR 1983 SC 1020, paragraphs 68, 69 and 76.

(vii) *L.T.C.* v. *Karnataka*, (1985) Supp SCC 476, paragraph 29.

(viii) *Lingappa* v. *State of Maharashtra*, AIR 1985 SC 389, paragraph 26.

Repugnancy

A Tamil Nadu Act which is repugnant to section 10A of the Indian Medical Council Act, 1956 is void as repugnant to the latter. The latter Act covers the entire field for establishing new medical colleges, leaving no scope for State-legislation; *T.K.V.T.S.S. Medical and Educational Charitable Trust* v. *State of Tamil Nadu*, AIR 1996 SC 2384.

Section 48(8) of the Karnataka Land Reforms Act, 1961 (as amended in 1974) prohibited the legal practitioners from appearing in proceedings before land tribunals. It was held to be repugnant to section 30 of the Advocates Act, 1961 and section 14 of the Bar Council Act, 1926. The Supreme Court held that Union List, Entries 77 and 78 are concerned with persons entitled to practice before the Supreme Court and High Court and these entries have been construed in; *O.N. Mohanti* v. *Bar Council of India*, AIR 1968 SC 888 as applied in *Jaswant Kaur* v. *State of Haryana*, AIR 1977 P&H 221, as regulating all aspects of the rights of advocates; *Srinivas Raghavachar* v. *State of Karnataka*, (1987) 2 SCC 692.

The test of 'pith and substance' has been applied to determine whether the State law has *substantially* transgressed on the field occupied by the law of Parliament. There is no 'repugnance' where the encroachment is not substantial, or the subject-matter of the legislation is not the same; *State of Uttar Pradesh* v. *Synthetics*, (1991) 4 SCC 139, paragraphs 18 and 28.

If the State Legislature enacts a law which is not covered by its exclusive List II but relates to a subject included in List-I, it is a patent case of *ultra vires*, because of article 246. It is beyond the competence of the State Legislature under clause (2) and pertains to the *exclusive* jurisdiction of Parliament under clause (1) of article 246; *Orissa Cement* v. *State of Orissa*, AIR 1991 SC 1676, paragraph 61.

Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole; *The Federation of Mining Associations of Rajasthan* v. *State of Rajasthan*, AIR 1992 SC 103, paragraph 7 (3 Judge Bench).

In order to be valid assent for the purposes of clause (2), it must appear that the President was apprised of the reason why the assent was sought (*e.g.*, that the State Act was repugnant to an earlier Act made by Parliament), and if there was any special reason why his assessment was sought; *Kannan* v. *Dt. Collector*, AIR 1991 AP 43, paragraph 7 (FB).

255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.—No Act of Parliament or of the Legislature of a State [1][***] and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given—

(a) where the recommendation required was that of the Governor, either by the Governor or by the President;

(b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;

---

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

(c) where the recommendation or previous sanction required was that of the President, by the President.

Notes on Article 255

Neither the legislature nor the President has the power to declare that non-compliance with article 255, of the Constitution was of no effect; *Utkal C. & J.* v. *State of Orissa*, AIR 1987 SC 2310. By giving his assent to a subsequent Bill, the President cannot validate, with retrospective effect an earlier Act which had failed for want of the President's assent under article 255 so as to validate acts done under the invalid statute, because it would amount to a declaration that non-compliance with article 255 was of no consequence, which is a declaration beyond the competence of the President; *Abdul Kadir* v. *State of Kerala*, AIR 1976 SC 182.

CHAPTER II — ADMINISTRATIVE RELATIONS

General

256. Obligation of States and the Union.—The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

257. Control of the Union over States in certain cases.—(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

[1][**257A. Assistance to States by deployment of armed forces or other forces of the Union.**—[*Rep. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 33 (w.e.f. 20-6-1979).*]]

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 43 (w.e.f. 3-1-1977).

258. Power of the Union to confer powers, *etc.*, on States in certain cases.—(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Governor of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

[1][**258A. Power of the States to entrust functions to the Union.**—Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.]

259. Armed Forces in States in Part B of the First Schedule.—[*Rep. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.]*

260. Jurisdiction of the Union in relation to territories outside India.—The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

261. Public acts, records and judicial proceedings.—Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

Disputes relating to Waters

262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.—(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

---

1. Ins. by the Constitution (Seventh Amendment) Act, 1956, sec. 18.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

Notes on Article 262

The Inter State Water Disputes Act, 1956 (33 of 1956) is legislation passed under article 262 of the Constitution. Section 11 of the Act excludes the jurisdiction of the Supreme Court in respect of a water dispute referred to the Tribunal. But the Supreme Court can direct that Central Government to fulfil its statutory obligation under section 4 of the Act, which is mandatory, particularly when the State of Tamil Nadu supported the writ petition filed for the purpose by a registered society; *Tamil Nadu C.N.V.V.N. U.P. Sangam* v. *Union of India*, AIR 1990 SC 1316.

Co-ordination between States

263. Provisions with respect to an inter-State Council.—If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

(a) inquiring into and advising upon disputes which may have arisen between States;

(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or

(c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

Notes on Article 263

The Supreme Court has held that once the Central Government finds that the dispute referred to in the request received from the State Government cannot be settled by negotiations, it becomes mandatory for the Central Government to constitute a tribunal and to refer the dispute to it for adjudication.

If the Central Government fails to make such reference, the court may, on an application under article 32 by an aggrieved party issue *mandamus* to the Central Government to carry out its statutory obligation; *T.N. Cauvery Sangam* v. *Union of India*, (1990) 3 SCC 440, paragraph 18.

It is held by the Supreme Court that—

(a) It is the exclusive function and duty of a court to interpret a statute and to determine the limits of the Jurisdiction of any tribunal or statutory authority. This jurisdiction of the court is not barred by section 11 of the Act.

(b) What is barred is the question whether any party before the tribunal is entitled to any relief on the merits.

In this case the tribunal held that it had no jurisdiction to grant any interim relief under the Act. The Supreme Court, on appeal by Special leave, held that the jurisdiction to grant interim relief had been conferred by agreement between the parties before the tribunal and the Supreme Court directed the tribunal to decide on the merits whether the appellant was entitled to any interim relief on the facts of the case; *State of Tamil Nadu* v. *State of Karnataka*, (1991) Supp 1 SCC 240, paragraphs 12.15 and 22.

PART XII

FINANCE, PROPERTY, CONTRACTS AND SUITS

CHAPTER I — FINANCE

General

[1][**264. Interpretation**.—In this Part, "Finance Commission" means a Finance Commission constituted under article 280.]

265. Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law.

Notes on Article 265

Article 265 requires that—

(i) there must be a law;

(ii) the law must authorise the tax; and

(iii) the tax must be levied and collected according to the law.

Tax illegally levied must be refunded. Doctrine of "unjust enrichment has to be applied after having regard to the facts of each case; *New India Industries* v. *Union of India*, AIR 1990 Bom 239 (FB) (case law reviewed).

Writ court can order refund of tax, paid under mistake of law; *Salonah Tea Co. Ltd.* v. *Superintendent of Taxes*, AIR 1990 SC 772, 774-776, paragraphs 6-13.

The authorisation made by the statute to levy a tax must be express. Taxing power cannot be derived from the delegation of mere regulating power, even though the tax was within the competence of the Legislature which made the delegation. The power to tax is not incidental or ancillary to the power to legislate on a matter; *Synthetics & Chemicals Ltd.* v. *State of Uttar Pradesh*, AIR 1990 SC 1927 (1952-53); *Subhash* v. *State of Haryana*, AIR 1992 P&H 20.

There is nothing in the Constitution to prevent the same person or property being subject to both State and municipal legislation; *Sri Krishna* v. *T.A.C.C.*, AIR 1991 SC 2096, paragraph 30.

Fee

The word "fee" does not have a rigid technical meaning. Its meaning depends on the subject-matter in relation to which the fee is imposed.

(i) *Secretary, Government of Madras* v. *P.R. Sriramulu*, AIR 1996 SC 676 paragraph 14.

(ii) *Corporation of Calcutta* v. *Liberty Cinema*, AIR 1965 SC 1107.

266. Consolidated Funds and public accounts of India and of the States.—(1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and money advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the

---

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for article 264.

Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and money advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

267. Contingency Fund.—(1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law under article 115 or article 116.

(2) The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor [1][***] of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislature of the State by law under article 205 or article 206.

Distribution of Revenues between the Union and the States

268. Duties levied by the Union but collected and appropriated by the States.—(1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

(a) in the case where such duties are leviable within any [2][Union territory], by the Government of India, and

(b) in other cases, by the States within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

269. Taxes levied and collected by the Union but assigned to the States.—[3][(1) Taxes on the sales or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the matter provided in clause (2).

---

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Subs. by Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. for "State specified in Part C of the First Schedule."
3. Subs. by the Constitution (Eightieth Amendment) Act, 2000, sec. 2, for clauses (1) and (2).

Explanation.—For the purposes of this clause,—

(a) the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;

(b) the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

(2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.]

[1][(3) Parliament may by law formulate principles for determining when a [2][sale or purchase of, or consignment of, goods] takes place in the course of inter-State or commerce.

Notes on Article 269

As to clause (1), sub-clauses (g) and (h) relating to inter-State purchases and consignments, see the Seventh Schedule, Union List, Entries 92A and 92B. Entry 92B was inserted by the Constitution (Forty-sixth Amendment) Act, 1982.

A law which, though purporting to impose tax on the price at which raw materials are purchased actually becomes effective with reference to manufactured goods on their despatch to a place outside the State, is a "Consignment tax", falling within the competence of Parliament under article 269(1)(g) and Union List, Entry 92B; *Goodyear India* v. *State*, AIR 1990 SC 781, 795, 796, 797, 798, paragraphs 35-40 [History of the Constitution (Forty-sixth Amendment) Act, 1982 and Law Commission of India, 61st report, referred to].

By reason of the new Entry [Entry 92B, List 1, Seventh Sch. inserted by the Constitution (Forty-sixth Amendment) Act, 1982] it has been held that when a tax is imposed by a State on the mere despatch of goods by a manufacturer to his own branches outside the State, the tax is *ultra vires* because it is a consignment tax within the exclusive competence of parliament under Entry 92B of List I.

When a question arises as to the competence of a legislature to impose a tax, in a conflict between two competing jurisdictions, the nomenclature used by the taxing State is not conclusive. The court has to apply the doctrine of pith and substance in order to find out the real nature of the tax, with reference to its taxing event; *Goodyear* v. *State of Haryana*, AIR 1990 SC 781, paragraphs 37-41 and 76; *Mukerian Papers* v. *State of Punjab*, 2 SCC 580, paragraphs 5 and 6.

[3]**[270. Taxes levied and distributed between the Union and the States.**—(1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268 and 269, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be

---

1. Ins. by the Constitution (Sixth Amendment) Act, 1956, sec. 3.
2. Subs. by the Constitution (Forty-sixth Amendment) Act, 1982, sec. 2, for "sale or purchase of goods".
3. Subs. by the Constitution (Eightieth Amendment) Act, 2000 sec. 3, for article 270 (w.r.e.f. 1-4-1996).

levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).

(3) In this article, "prescribed" means—

(a) until a Finance Commission has been constituted, prescribed by the President by order, and

(b) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission;]

271. Surcharge on certain duties and taxes for purposes of the Union.—Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

[1][***]

273. Grants in lieu of export duty on jute and jute products.—(1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal, in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States, such sums as may be prescribed.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as any export duty on jute or jute products continues to be levied by the Government of India or until the expiration of ten years from the commencement of this Constitution, whichever is earlier.

(3) In this article, the expression "prescribed" has the same meaning as in article 270.

274. Prior recommendation of President required to Bills affecting taxation in which States are interested.—(1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian Income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to State, or which imposes any surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

(2) In this article, the expression "tax or duty in which States are interested" means—

---

1. Article 272 omitted by the Constitution (Eightieth Amendment) Act, 2000, sec. 4.

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State; or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State.

275. Grants from the Union to certain States.—(1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

(a) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in [1][Part I] of the table appended to paragraph 20 of the Sixth Schedule; and

(b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

[2][(1A) On and from the formation of the autonomous State under article 244A,—

(i) any sums payable under clause (a) of the second proviso to clause (1) shall, if the autonomous State therein, be paid to the autonomous State, and, if the autonomous State comprises only some of those tribal areas, be apportioned between the State of Assam and the autonomous State as the President may, by order, specify;

(ii) there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the autonomous State sums, capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous State with the approval of the Government of India for the purpose of raising the level of administration of that State to that of the administration of the rest of the State of Assam.]

(2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament:

---

1. Subs. by the North Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71, for "Part A" (w.e.f. 21-1-1972).
2. Ins. by the Constitution (Twenty-second Amendment) Act, 1969, sec. 3.

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission.

276. Taxes on professions, trades, callings and employments.—(1) Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed [1][two thousand and five hundred rupees] per annum:

[2][***]

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

277. Savings.—Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

Notes on Article 277

For meanings of 'tax' and 'fee' see notes on article 265.

278. Agreement with States in Part B of the First Schedule with regard to certain financial matters.—*[Rep. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.]*

279. Calculation of "net proceeds", *etc.*—(1) In the foregoing provisions of this Chapter, "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Comptroller and Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision of this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the

---

1. Subs. by the Constitution (Sixtieth Amendment) Act, 1988, sec. 2, for "two hundred and fifty rupees."
2. Proviso omitted by the Constitution (Sixtieth Amendment) Act, 1988, sec. 2.

manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

280. Finance Commission.—(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;

[1][(bb) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;]

[2][(c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;]

[3][(d) any other matter referred to the Commission by the President in the interests of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

281. Recommendations of the Finance Commission.—The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

Miscellaneous Financial Provisions

282. Expenditure defrayable by the Union or a State out of its revenues.—The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

---

1. Ins. by the Constitution (Seventy-third Amendment) Act, 1992, sec. 3 (w.e.f. 24-4-1993).
2. Ins. by the Constitution (Seventy-fourth Amendment) Act, 1992, sec. 3 (w.e.f. 1-6-1993).
3. Sub-clause (c) relettered as sub-clause (d) by sec. 3, *ibid.* (w.e.f. 1-6-1993).

283. Custody, *etc.* of Consolidated Funds, Contingency Funds and moneys credited to the public accounts.—(1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds, received by or on behalf of the Government of the State, their payment into the public account of the State and withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated by rules made by the Governor [1][***] of the State.

284. Custody of suitors' deposits and other moneys received by public servants and courts.—All moneys received by or deposited with—

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of the State, as the case may be, or

(b) any court within the territory of India to the credit of any cause, matter, account or persons, shall be paid into the public account of India or the public account of the State, as the case may be.

285. Exemption of property of the Union from State taxation.—(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

Notes on Article 285

Property of a Union is exempted from State taxation under article 285 except for taxes which were imposed on the Central Government before the Constitution. In Punjab vehicles of railways were not being subjected to road tax before 1950 and they cannot be subjected to tax after the Constitution. Even though the relevant rules were there, the tax was not actually being levied against the Union of India's vehicles. Writ petition by the Union of India was accepted; *Union of India* v. *State of Punjab*, AIR 1990 P&H 183 (J.S. Sekhon, J.) (It is not clear how the High Court entertained a dispute between the Union of India and the State. Under the Constitution, the Supreme Court has, exclusive jurisdiction in such disputes).

---

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

Property owned by a Government company or a statutory corporation, which has a corporate personality of its own, cannot be said to be 'property of the Union' and may, therefore, be liable to State or municipal taxation; *I.A.A.I.* v. *Municipal Court*, AIR 1991 Del 302, paragraph 35.

286. Restrictions as to imposition of tax on the sale or purchase of goods.—(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

[1][***]

[2][(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

[3][(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,—

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.]]

Notes on Article 286

For the purposes of clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State; *Associated Cement* v. *C.S.T.*, (1991) Supp (1) SCC 251, paragraphs 6-9.

A sale may be for the purpose of export but in the course of export, *e.g.*, the 'penultimate sale' for the purpose of export; *Murli* v. *State of Haryana*, (1991) 1 SCC 377, paragraphs 6-7 (3 judges).

Export sales become complete only after the goods reach the foreign destination; *State of Orissa* v. *M.M.T.C.*, JT (1994) 4 SC 628.

287. Exemption from taxes on electricity.—Save in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is—

(a) consumed by the Government of India, or sold to the Government of India for consumption by that Government; or

(b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway,

and any such law imposing, or authorising the imposition of, a tax on the sale of

---

1. *Explanation* to clause (1) omitted by the Constitution (Sixth Amendment) Act, 1956, sec. 4.
2. Subs. by the Constitution (Sixth Amendment) Act, 1956, sec. 4, for clauses (2) and (3).
3. Subs. by the Constitution (Forty-sixth Amendment) Act, 1982, sec. 3, for clause (3).

electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

288. Exemption from taxation by States in respect of water or electricity in certain cases.—(1) Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Explanation.—The expression "law of a State in force" in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order.

289. Exemption of property and income of a State from Union taxation.—(1) The property and income of a State shall be exempt from Union taxation.

(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.

(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government.

290. Adjustment in respect of certain expenses and pensions.—Where under the provisions of this Constitution the expenses of any court or Commission, or the pension payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India or after such commencement in connection with the affairs of the Union or of a State, are charged on the Consolidated Fund of India or the Consolidated Fund of a State, then, if—

(a) in the case of a charge on the Consolidated Fund of India, the court or Commission serves any of the separate needs of a State, or the person has served wholly or in part in connection with the affairs of a State; or

(b) in the case of a charge on the Consolidated Fund of a State, the court or Commission serves any of the separate needs of the Union or another State, or

the person has served wholly or in part in connection with the affairs of the Union or another State,

there shall be charged on and paid out of the Consolidated Fund of the State or, as the case may be, the Consolidated Fund of India or the Consolidated Fund of the other State, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

[1][**290A. Annual payment to certain Devaswom Funds**.—A sum of forty-six lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Kerala every year to the Travancore Devaswom Fund; and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of the Consolidated Fund of the State of [2][Tamil Nadu], every year to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin.]

291. Privy purse sums of Rulers.—*[Rep. by the Constitution (Twenty-sixth Amendment) Act, 1971, sec. 2.]*

CHAPTER II — BORROWING

292. Borrowing by the Government of India.—The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

293. Borrowing by States.—(1) Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.

(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

(4) A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

---

1. Ins. by the Constitution (Seventh Amendment) Act, 1956, sec. 19.
2. Subs by the Madras State (Alteration of Name) Act, 1968 (53 of 1968) sec. 4, for "Madras" (w.e.f. 14-1-1969).

CHAPTER III— PROPERTY, CONTRACTS, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS

294. Succession to property, assets, rights, liabilities and obligations in certain cases.—As from the commencement of this Constitution—

(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State, subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, West Punjab and East Punjab.

295. Succession to property, assets, rights, liabilities and obligations in other cases.—(1) As from the commencement of this Constitution—

(a) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matters enumerated in the Union List, and

(b) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1).

296. Property accruing by escheat or lapse or as *bona vacantia*.—Subject as hereinafter provided any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as *bona vacantia* for want of a rightful

owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union:

Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or a State, vest in the Union or in that State.

Explanation.—In the article, the expressions "Ruler" and "Indian State" have the same meanings as in article 363.

[1][**297. Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union.**—(1) All lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union.

(2) All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union.

(3) The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by Parliament.]

[2][**298. Power to carry on trade, *etc.***—The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that—

(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.]

Notes on Article 298

Trade or business

The leading case on this article is *Anraj* v. *State of Maharashtra*, AIR 1984 SC 781. The case discusses, *inter alia*, the relationship between (a) articles 73 and 298, and also (b) articles 258 and 298.

Extra-territorial operation

It has been held that the power of a State under article 298 extends to carrying on a trade in other States also; *Khazan Singh* v. *State of Uttar Pradesh* AIR 1974 SC 669. This implies that article 298 has been treated as an independent source of executive power. For, otherwise, on a combined reading of article 162 and 245(1). The executive power of a State would be confined to the area of the State as its legislative power is so confined by virtue of article 245.

---

1. Subs. by the Constitution (Fortieth Amendment) Act, 1976, sec. 2, for article 297 (w.e.f. 27-5-1976).
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 20, for article 298.

Where a firm has been carrying on the business of selling lubricants for 18 years, abrupt stoppage of supply by the Indian Oil Corporation without notice is arbitrary. Decision of the State/ public authority under article 298 of the Constitution is an administrative decision and can be impeached on the ground that the decision is arbitrary or violative of article 14 of the Constitution of India on any of the grounds available in the public law field. In respect of a corporation like the Indian Oil Corporation, when, without informing the parties concerned, an alleged change of policy and (on that basis) action to seek to bring to an end the course of transaction over 18 years involving large amount of money is taken, the action is not fair action, especially in view of the monopolistic nature of the corporation in this field. Therefore, it is necessary to reiterate that even in the field of public law, the relevant persons who are concerned or likely to be affected should be taken into confidence. Whether, and in what circumstances, that confidence should be taken into consideration, cannot be laid down on any straight-jacket basis. It depends on the nature of the right involved and nature of the power sought to be exercised in a particular situation; *Mahabir Auto Stores* v. *Indian Oil Corporation*, AIR 1990 SC 1031 Reversing; *M/s. Mahabir Auto Stores* v. *Indian Oil Corporation Ltd.*, AIR 1989 Del 315.

299. Contracts.—(1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor [1][***] of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor [1][***] by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor [2][***] shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Notes on Article 299

The position resulting from article 299 can be stated in this form—

(a) Government contracts must be expressed as to be made by the President or the Governor.

(b) They shall be executed by the competent person and in the prescribed manner.

(c) If the above requirements are not complied with—

(i) Government is not bound by the contract, because article 299 is mandatory;

(ii) the officer executing the contract would be personally bound;

(iii) the Government, however, if it enjoys the benefit of performance by the other party to the contract, would be bound to give recompense on the principle of *quantum merit or quantum valebat* (service or goods received). This is on quasi-contract (sections 65 and 70 of the Indian Contract Act, 1872).

(iv) Besides this, the doctrine of promissory estoppel may apply on the facts.

(d) In any case, the President or the Governor is not personally liable on the contract.

Following are the important decisions supporting the above proposition—

(i) *State of West Bengal* v. *B.K. Mondal*, AIR 1962 SC 779 (Article 299 is mandatory).

(ii) *Karamshi* v. *State of Bombay*, AIR 1964 SC 1714 (Person executing must be authorised to enter into the control).

---

1. The Words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. The Words "nor the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

(iii) *Union of India* v. *Rallia Ram*, AIR 1963 SC 1985 (Tender and acceptance).

(iv) *Bihar Co-op Society* v. *Siphai*, AIR 1977 SC 2149 (Quantum meruit).

(v) *M.P. Sugar Mills* v. *State of Uttar Pradesh*, AIR 1979 SC 627 (Promissory estoppel).

(vi) *New Marine Coal Co.* v. *Union of India*, AIR 1964 SC 152.

The freedom of the Government to enter into business with anybody it likes is subject to the condition of reason and fair play as well as public interest; *Mahabir Auto* v. *I.O.C.*, AIR 1990 SC 1031.

Indoor management

In the case of Government contracts and contracts of Government Corporations, where certain formalities are required to be observed under the Constitution or under the law, the doctrine of "indoor management" cannot be applied, so as to remove the need to observe the formalities regarding formation of the contract or essential terms of the contract; *U.P. Rajkiya Nirman Nigam* v. *Indure Private Ltd.*, AIR 1996 SC 2373, paragraph 18.

300. Suits and proceedings.—(1) The Goverment of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution—

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

Notes on Article 300

Government liability in tort

(a) The ruling principle is that Government is not liable for torts of its employees committed in the course of performance of sovereign functions.

(b) The theoretical doctrine as per (a) above is still adhered to, but it is being applied in a liberal manner and the courts interpret "sovereign" narrowly, as is shown by recent law.

It is enough to cite the following cases of importance:—

(i) *P&O Steam Navigation Co.* v. *Secretary of State*, (1861) 5 Bom HCR App A. (This was really a Calcutta ruling, reported in the Bombay series).

(ii) *State of Rajasthan* v. *Vidyawati*, AIR 1962 SC 933.

(iii) *Shyam Sunder* v. *State of Rajasthan*, AIR 1974 SC 980, paragraph 21.

(iv) *Kasturi Lal* v. *State of Uttar Pradesh*, AIR 1965 SC 1039.

(v) *Union of India* v. *Sugrabai*, AIR 1969 Bom 13.

(vi) *Virendra* v. *State of Uttar Pradesh*, (1955) 1 SCR 415, 436 (Act of State).

A suit lies against the Government for wrongs done by public servants in the course of business, such as death or injury caused to a person by Police atrocities; *Saheli* v. *Commissioner of Police*, AIR 1990 SC 513.

[1][CHAPTER IV — RIGHT TO PROPERTY

300A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.

Notes on Article 300A

Nature of the right

Right not to be deprived of property save by authority of law is no longer a fundamental right, though it is still a constitutional right; *Bishamber* v. *State of Uttar Pradesh*, AIR 1982 SC 33.

State Financial Corporations

Section 29 of the State Finance Corporations Act, 1951 gives the Corporation power to take possession of the property of an individual concerned, if the latter makes the default in payment of any loan *etc*. The Finance Corporation Act does not violate articles 14, 19, 21 or 300A of the Constitution. The principles of natural justice have to be read into the section. The Board of the Corporation consists of high ranking officials. When the industrial Concern enters into an agreement with the Corporation it is fully aware of the provision. If the Corporation acts unfairly, the action can be challenged, but that does not vitiate the provision; *Alka Ceramics* v. *Gujarat State Finance Corporation*, AIR 1990 Guj 105 (DB).

Requisitioning

There was a dispute between the operators of mini buses and their workers. Instead of referring the dispute to the proper forum, the State Government purporting to act under section 3 of the West Bengal Requisition of Vehicles Act, 1979 requisitioned the buses. The buses were then run by the Municipality though the requisition order did not mention that they would be so run. It was held, that the requisition was illegal, Further, though the order was passed by the District Magistrate, he was actually acting under the orders of the State Transport Minister. Hence the requisitioning was *mala fide* and for extraneous purpose and void; *New Barrackppore Mini Bus Owners Association* v. *District Magistrate*, AIR 1990 Cal 268, 290 to 293, paragraphs 42-55 (Mahitosh Majumdar J) (reviews case law).

As to the general effect of article 300A see *Elizabeth* v. *State of Kerala*, AIR 1991 Ker 162, paragraph 24 (FB); and *TESC* v. *State of Assam*, AIR 1990 SC 123, 138.

After the Constitution (Forty-fourth Amendments) Act, 1978 the right to property is only a constitutional right. It is not a part of the basic structure. The Constitution (Sixty-sixth Amendment) Act, 1990 does not destroy the basic structure of the Constitution; *M.K. Kachar* v. *State of Gujarat*, JT (1994) 4 SC 473.

A letter written by Private Secretary to the Minister, to the General Manager, Railways confers no legal right, nor can it be said to raise 'Legitimate expectations; *Union of India* v. *Graphic Industries*, JT (1994) 5 SC 237.

PART XIII

TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

301. Freedom of trade, commerce and intercourse.—Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

---

1. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 34 (w.e.f. 20-6-1979).

Notes on Article 301

Imposition of duty does not in every case tantamount to infringement of article 301. One has to determine whether the impugned provision amounts to a restriction directly and immediately on the movement of trade or commerce. *See* the undermentioned cases:

(i) *Atiabari Tea Co. Ltd.* v. *State of Assam*, AIR 1961 SC 232: (1961) 1 SCR 809.

(ii) *Automobile Transport (Rajasthan) Ltd.* v. *State of Rajasthan*, AIR 1962 SC 1406: (1963) 1 SCR 491.

(iii) *Andhra Sugars Ltd.* v. *State of Andhra Pradesh*, AIR 1968 SC 599.

(iv) *State of Madras* v. *N.R. Nataraja Mudaliar*, AIR 1969 SC 147: (1968) 3 SCR 829.

(v) *State of Kerala* v. *A.B. Abdul Khadir*, AIR 1970 SC 1912: (1970) SCR 700.

(vi) *Goodyear India Ltd.* v. *State of Haryana*, AIR 1990 SC 781, 806, paragraphs 74 and 75.

(vii) *Maharaja Tourist Services* v. *State of Gujarat*, AIR 1991 SC 1650.

302. Power of Parliament to impose restrictions on trade, commerce and intercourse.—Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.—(1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

304. Restrictions on trade, commerce and intercourse among States.—Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law—

(a) impose on goods imported from other States [1][or the Union territories] any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

Notes on Article 304

The test of reasonableness for the purposes of clause (b) of article 304 would be the same as the test adopted for the purpose of article 196. *See* the undermentioned cases:

(i) *Tika Ramji* v. *State of Uttar Pradesh*, (1956) SCR 393.

(ii) *Kalyani Stores* v. *State of Orissa*, AIR 1966 SC 1686.

---

1. Ins. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

Taxation by a State on goods imported from outside is valid provided it is non-discriminatory and this includes sales tax so long as it is non-discriminatory. *See* the undermentioned cases:

(i) *State of Madras* v. *Nataraja*, AIR 1969 SC 147.

(ii) *State of Rajasthan* v. *Mangilal*, (1969) SCC 710.

(iii) *Indian Cement* v. *State of Andhra Pradesh*, AIR 1988 SC 567.

A notification issued in exercise of legislative power under sections 24 and 25 of the U.P. Sales Tax Act, 1948, is a "law" within articles 304 and 306; *Video Electronics* v. *State of Punjab*, AIR 1990 SC 820.

An action which furthers the economic development of the whole of India and its unity by removing economic barriers cannot be said to be discriminatory; *Video Electronics* v. *State of Punjab*, AIR 1990 SC 820, paragraphs 20-28 (3 Judges).

Regulation and Prohibition must be distinguished from each other

(a) A rule which totally prohibits the movement of forest produce between specified hours is prohibitory, (b) A rule which permits, transport, subject to specified conditions, for preventing public injury or to serve the public good, *e.g.*, in pursuance of the directive under article 51A would be a reasonable restriction whether under article 19(1)(g) or under article 304; *State of Tamil Nadu* v. *Sanjeetha*, AIR 1993 SC 237, paragraphs 17 and 18.

The illegal felling of trees may be regulated by requiring that no forest produce should be transported from one place to another without obtaining a permit from a specified officer; *Aramachine* v. *State of Rajasthan*, AIR 1992 Raj 7, paragraphs 10, 14 and 17.

Where the State law does not offend against article 301 or article 303, it need not be examined whether the conditions imposed by article 304 are satisfied; *Video Electronics* v. *State of Punjab*, AIR 1990 SC 820, paragraphs 20, 28 (3 Judges).

Where an assessee purchases upon scrap from both local dealers in the State of Karnataka and dealers outside the State and the State of Karnataka imposes a tax on the sale of ingots manufactured out of scrap purchased from outside the State while ingots manufactured from locally purchased scrap would not be subjected to such a tax, the case would be hit by clause (a) of article 304; *Andhra S.C.* v. *CCDT*, AIR 1990 SC 1912, paragraphs 22-23.

A requirement to deposit a cash amount as security for realisation of the money due under a Chit Fund Scheme has been held to be in the public interest; *Subodhaya Chit Fund (P.) Ltd.* v. *Director of Chits*, AIR 1991 SC 998, paragraph 4.

Where the original act received the President's sanction under article 304 (b), no fresh sanction is required where the Amending Act, without imposing any additional restriction merely varied the form of restriction; *Subodhaya Chit Fund (P.) Ltd.* v. *Director of Chits*, AIR 1991 SC 998, paragraph 5.

[1][**305. Saving of existing laws and laws providing for State monopolies.**—Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (ii) of clause (6) of article 19.]

---

1. Subs. by the Constitution (Fourth Amendment) Act, 1955, sec. 4, for article 305.

Notes on Article 305

Where a pre-existing State Act is amended by a post Constitution Act then the protection of article 305—

(a) is available to the amending Act also if it is merely clarificatory; but

(b) is not available in so far as the amending Act makes any additional provisions; *Punjab Traders* v. *State of Punjab*, AIR 1990 SC 2300, paragraph 14.

306. Power of certain States in Part B of the First Schedule to impose restrictions on trade and commerce.—*[Rep. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.]*

307. Appointment of authority for carrying out the purposes of articles 301 to 304.—Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 301, 302, 303 and 304, and confer on the authority so appointed such powers and such duties as it thinks necessary.

PART XIV

SERVICES UNDER THE UNION AND THE STATES

CHAPTER I — SERVICES

308. Interpretation.—In this Part, unless the context otherwise requires, the expression "State" [1][does not include the State of Jammu and Kashmir].

309. Recruitment and conditions of service of persons serving the Union or a State.—Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor [2][***] of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

Notes on Article 309

Administrative instructions

Though non-statutory Rules cannot modify statutory Rules, there is nothing to prevent the Government from issuing administrative instructions on matters upon which the statutory Rules are silent; *Comptroller* v. *Mohan*, (1992) 1 SC 20.

---

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for "means a State specified in part A or part B of the First Schedule".
2. The Words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

Adverse remarks

Adverse remarks against which a representation is pending should not be taken into account when considering an employee's case for selection to the Selection Grade, *etc.*; *State of M.P.* v. *Bani*, (1990) Supp SCC 736, paragraph 6.

If an adverse order is challenged in a court of law, it is always open to the competent authority to place before the court the reasons which may have led to the rejection of the representation; *Union of India* v. *E.G. Nambudri* , AIR 1991 SC 1216.

A copy of the adverse entry is to be supplied to the employee within a reasonable time. This obligation to communicate does not extend to any observation in the entry which is not adverse to the employee; *Baikuntha* v. *C.D.M.O.*, (1992) 2 SCC 299, paragraph 33 (3 Judges).

The remarks in a Confidential Report are used as data of comparative merit when questions of promotion, confirmation, crossing of efficiency bar, termination of service, *etc.*, of the employees in question arise; *Union of India* v. *Nambudri*, (1991) 3 SCC 38, paragraph 6.

Application under section 19 of the Administrative Tribunals Act lies for expunction of adverse remarks; *State of M.P.* v. *Bani*, (1990) SCC 738, paragraph 5.

Appointment

Though a person, by making an application for a post pursuant to an advertisement, does not acquire any vested right to be appointed to that post, he acquires a right to be *considered* for selection according to the terms of that advertisement. The eligibility of a candidate for selection for a post depends upon whether he is qualified in accordance with the relevant Rules as they existed at the date of the advertisement for recruitment; *N.T. Bevin Katti* v. *Karnataka Public Service Commission*, (1990) 3 SCC 157.

Armed forces

As regards retirees from the Armed forces, the Supreme Court has not accepted the demand of retirees of armed forces for "one rank one pension"; *Indian Ex-Service League* v. *Union of India*, AIR 1991 SC 1182, paragraphs 8, 10 and 18.

It is legitimate for the State Government to announce special benefits of pension, increments *etc.*, to persons enrolled in the armed forces during emergency as contrasted with those enrolled before emergency. Older men, by joining the military service, lost the chance of joining other Government departments. The discrimination is reasonable; *Dhan Singh* v. *State of Haryana*, AIR 1991 SC 1047.

Compulsory retirement

Compulsory retirement does not contain any stigma and is based on the subjective satisfaction of the authority. However, an order of compulsory retirement cannot be quashed under article 226, on the ground that the adverse entry was not communicated to the petitioner, or that rules of natural justice or the requirements of article 21 of the Constitution have not been complied with; *Union of India* v. *Reddy*, AIR 1990 SC 563, paragraph 27; *State of Sikkim* v. *Sonam*, (1991) Supp 1 SCC 179, paragraphs 4 and 5.

Criminal proceedings

Since article 20(2) has been held to be applicable only to punishment in judicial proceedings, there is no question of its applications where a prosecution or acquittal in a criminal proceeding is followed by a departmental proceeding against a Government servant and *vice versa*. Conversely, recovery of embezzled or other recovery due to the Government by departmental proceeding cannot bar a criminal prosecution for the offence, if any; *Bishwanath* v. *Union of India*, (1991) 16 ATC 912 (Cal), paragraphs 14-16 (FB).

Discrimination

Even as between employees of the same class of service, it would be permissible to give weightage to those who acquire a relevant higher qualification, which is reasonable, *e.g.*, giving accelerated promotion to the most meritorious in order to attract brilliant candidates to the public service; *Biswas* v. *State Bank of India*, (1991) 2 UJSC 567, paragraph 4.

If the Rule be applicable to all classes of Government servants, it cannot be challenged as discriminatory, but if it is *mala fide*, or arbitrary or perverse, the order may be struck down; *Baikuntha* v. *C.D.M.O.*, (1992) 2 SCC 299, paragraphs 32 and 34 (3 Judges).

Exploitation

The State should not exploit its employees nor should it take advantage of the helplessness of either the employees or the unemployed persons. The State should act as a model employer and give equal pay for equal work. It should not keep a person in temporary or *ad hoc* status for long, and take steps for their regularisation; *State of Haryana* v. *Piara*, (1992) 4 SCC 18.

The rule of equality of pay cannot be so applied as to give to an employee the higher emoluments of a post in which he has never worked; *Virender* v. *Avinash*, AIR 1991 SC 958.

In general, the grant of a higher pay to a junior in the same cadre would be violative of the rule of "equal pay for equal work". But to this there are exceptions founded on justifiable grounds or intelligible differential, *e.g.*, where the higher pay offered to a junior is personal to him, say, on account of additional duties; *Chief Engineer* v. *Jagdish*, AIR 1991 SC 200 paragraph 5.

Examination

The court would not interfere with the comparative merits of candidates as assessed by the examining body, in the absence of bias or *mala fides* or material irregularity in the Constitution of the examining body or the procedure adopted by it—because these are matters requiring an expertise which the courts do not possess; *Dalpat* v. *Mahajan*, (1990) 1 SCC 305, paragraph 12 (3 Judges); *Jaswant* v. *State of Punjab*, (1990) Supp 1 SCC 313, paragraph 6.

Gratuity

Government has no longer any discretion to forfeit gratuity on any ground; *Jesuratnam* v. *Union of India*, (1990) Supp SCC 640, paragraph 2.

High Court

In regard to making appointments to clerical posts in the subordinate courts, the Chief Justice of the High Court cannot depart from the constitutional and statutory provisions on the subject. If the Chief Justice takes upon himself the power of both the authorities mentioned above to make selections for, as well as appointments in, the establishments of the subordinate courts, such appointments shall be void; *Puttaswamy* v. *Chief Justice*, AIR 1991 SC 295.

Interpretation

Subject to certain limitations, Government's interpretation of its own rules and the policy decisions made thereunder should be respected by the courts; *Ajeet Singh Singhvi* v. *State of Rajasthan*, (1991) Supp 1 SCC 343 paragraph 12.

Interview

There is nothing contrary in preparing a select list based on the results of the written test alone and then to call for interview out of that list, depending upon the number of vacancies available; *Biswas* v. *State Bank of India*, (1991) 2 UJSC 567, paragraphs 4.

Where the Rules relating to recruitment do not require that both written and *viva voce* tests should be adopted, selection by interview alone cannot be held to be illegal. There is no inflexible standard as to the duration of an interview. A candidate cannot complain that the interview was too short, except in the case of a selection post, *i.e.*, of a higher category; *Sardara Singh* v. *State of Punjab*, AIR 1991 SC 2248, paragraphs 6 and 7.

The court would not interfere where, in the absence of the Rules fixing any pass marks for the interview test, the examining body fixes a 40% pass marks for the interview as for the written test; *Manjeet* v. *E.S.I.C.*, AIR 1990 SC 1104, paragraph 6 (3 Judge Bench).

Lien

When a Government servant's lien is suspended under the Rules, *e.g.*, while he is appointed to a deputation post, he loses all chances of being considered for promotion during the period of such suspension of lien. His lien in the patent cadre is revived only when he reverts to the parent cadre either on his own option, or on release from the deputation; *Ram Saran* v. *State of Punjab*, (1991) 2 SCC 253, paragraphs 14, 19-21.

The lien on a post is acquired only when the employee has been confirmed and made permanent on that post and not earlier; *Triveni* v. *State of Uttar Pradesh*, AIR 1992 SC 496, paragraphs 21-22.

Mandamus

Mandamus would issue to give the petitioner the same pay scale as has been given to employees of the same cadre, without any rational justification; *State of West Bengal* v. *Debdas*, (1991) 1 SCC 138, paragraph 15; *State of Rajasthan* v. *Gurcharan*, (1990) Supp SCC 778, paragraphs 10-11.

Mandate to Government

In an appeal from a judgment of the Andhra Pradesh High Court, the Supreme Court has held that the High Court or the Administrative Tribunal cannot issue a mandate to the State Government to make service rules under article 309 of the Constitution. "The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule-making power in any manner. The court cannot assume to itself a supervisory power over the rule-making power of the executive under article 309 of the Constitution". The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize regarding any matter which, under the Constitution, lies within the sphere of legislature or executive; *Mallikarjuna Rao* v. *State of Andhra Pradesh*, AIR 1990 SC 1251, 1255, paragraphs 10-12.

Officiating Post

Where an officer, substantively holding a post, is ordered merely to discharge the duties of a higher post in the exigencies of public service, he is not entitled to the emoluments of the higher post. He can claim only what is called the "charge allowance"; *Ramakant* v. *Union of India*, AIR 1991 SC 1145, paragraph 4.

Privacy

The L.I.C. cannot terminate the service of a lady employee who refuses to give particulars about her menstrual periods. To demand such information compulsorily violates the right of privacy flowing from article 21 of the Constitution. The L.I.C. can (if it so chooses) get the employee medically examined, if the information in question is required to check pregnancy, *etc.*; *Neera* v. *L.I.C.*, (1992) 1 SCC 286.

Promissory estoppel

A change of policy is also controlled by the doctrines of promissory estoppel; *Amrit* v. *State of Punjab*, (1992) 2 SCC 411, paragraphs 4-6.

Promotion

Any change in the Rules which affects the right to be considered for promotion would offend articles 14 and 16 but not a change which merely affects the chances of promotion. Any change in the Rules will, therefore, not be applicable only to vacancies which occurred prior to the amendment. But the petitioner was given the benefit of a retrospective amendment which took place during the pendency of his litigation; *Sheshrao* v. *Govindrao*, AIR 1991 SC 76, paragraph 3.

In considering an employee for promotion, the relevant authority is entitled to take into consideration the penalties imposed on him, including censure upto the date when such consideration takes place; *Union of India* v. *K.V. Janakiraman*, AIR 1991 SC 2010, paragraph 8 (3 Judges).

The mere pendency of a departmental proceeding at any stage is not sufficient for not considering an employee's case for promotion or to withhold his promotion; *Union of India* v. *Tejendra*, (1991) 4 SCC 129, paragraph 4.

Withholding of promotion on reasonable ground is permissible; *Arumugam* v. *State of Tamil Nadu*, (1991) Supp 1 SCC 199, paragraph 5.

The consideration of an employee for promotion may be postponed if he is suspended in view of the initiation of disciplinary of criminal proceedings against him; *Union of India* v. *K.V. Janakiraman*, AIR 1991 SC 2010: (1991) 4 SCC 109, paragraphs 16, 17 and 26 (3 Judges).

Where a person entitled to promotion under a statutory rule was unlawfully denied consideration, he would be entitled to be considered for promotion with the retrospective effect and his seniority would also be re-fixed on that basis. In such a case, those who would be affected by such order cannot complain of discrimination, but the court may issue suitable directions to avoid hardship to them; *Ram* v. *State of Uttar Pradesh*, AIR 1991 SC 1818.

Where a person entitled to promotion under a statutory Rule was unlawfully denied consideration, he would be entitled to be considered for promotion with the retrospective effect and his seniority would also be-fixed on that basis; *Ramaual* v. *State of Himachal Pradesh*, (1991) Supp 1 SCC 198, paragraph 3.

Provident fund

Under a pension scheme, Government has a continuing obligation so long as the retiree is alive. In a Provident Fund Scheme, the retiree's right is crystallised on the date of retirement and after that date Government has no obligation. Hence if, under the Provident Fund Scheme, option is given to the pensioner from a specified cut off date, there is no discrimination and it would not be hit by article 14 of the Constitution; *Krishna* v. *Union of India*, AIR 1990 SC 1782, paragraphs 30 and 31; *B.R.O.A.* v. *Union of India*, AIR 1992 SC 767, paragraphs 8 and 10.

Contributory Provident Fund retirees and Pension Scheme Optees form two different classes; *State of Rajasthan* v. *Rajasthan Pensionary Samaj*, AIR 1991 SC 1743.

Qualification

The court would not interfere with the propriety of particular qualification for a post laid down by the Government; *Rangaswamy* v. *Government of Andhra Pradesh*, (1990) 1 SCC 288, paragraph 6.

It is competent for the appropriate authority to prescribe relevant qualifications for appointment to a post, provided they are not unconstitutional. It is not for the courts to consider and assess whether they are proper. A person who is aggrieved, can move the appropriate authority for review of the prescribed qualifications; *Rangaswamy* v. *Government of Andhra Pradesh*, AIR 1990 SC 535.

Being a matter of policy, it is open to the Government to change the qualifications for a post from time to time. But unless the amendment is given retrospective effect, if cannot affect the right of a candidate who was duly qualified according to the rules which were in force at the time when the selection was made by the body authorised to make it; *Mahendran* v. *State of Karnataka*, (1990) 1 SCC 411, paragraphs 4-5 (3 Judges).

Quota

When appointments are made from more than one source, it is permissible to fix the ratio (known as 'quota') for recruitment from the different sources, and if rules are framed in this regard, they must ordinarily be followed strictly; *The Direct Recruit Class-II Engineering Officers' Association* v. *State of Maharashtra*, (1990) 2 SCC 715, paragraphs 21 and 47 (CB).

Railways

Employees in Railway Institutes and Railway Clubs are not railway employees and cannot be treated on par with employees in statutory railway canteens: *All India Railway Institute Employees' Association* v. *Union of India*, AIR 1990 SC 952.

Recruitment

In the absence of any constitutional bar (*e.g.* article 233), determination of the mode of recruitment to a service or post, say by promotion, transfer or direct appointment, is a matter of policy of the Government or other appropriate authority; *Union of India* v. *Syed*, (1992) 1 UJSC 590, paragraph 13 (3 Judges); *Rangaswamy* v. *Government of Andhra Pradesh*, AIR 1990 SC 535.

Subject to constitutional provisions (*e.g.* article 233 of the Constitution), it is for the Government (or other appropriate authority) to decide as a matter of policy, whether recruitment to a particular service should be by (a) promotion, (b) direct recruitment, or (c) transfer; *Orissa J.S.A.* v. *State of Orissa*, AIR 1991 SC 382, paragraph 3.

Retrenchment

(i) Where, owing to reduction of work or shrinkage of cadre, retrenchment becomes necessary, then the principle of "last come, first go" is applicable, subject to what is stated in (ii) below,

(ii) If, in disregard of this principle, a junior is retained in preference to a senior, article 14 of the Constitution is violated,

(iii) But the above principle does not apply where services of a temporary employee are terminated on an assessment of his merit in accordance with the conditions of his service,

(iv) In such a case, retaining a Junior with merit is no discrimination.

See the undermentioned cases:

(i) *Triveni* v. *State of Uttar Pradesh*, AIR 1992 SC 496.

(ii) *State of Uttar Pradesh* v. *Kaushal*, (1991) 1 SCC 691, paragraph 5 (3 Judges).

Retrospectivity

A rule operates prospectively unless it is made retrospective by express provision or by necessary intendment; *Mahendran* v. *State of Karnataka*, AIR 1990 SC 405, paragraph 5; *N.T. Bevin Katti* v. *Karnataka Public Service Commission*, AIR 1990 SC 1233, paragraph 13.

Even where the restructuring of a service is necessitated by the mistake on the part of the Department, such change should not be so interpreted so as to prejudice those who were in service prior to the date when the change in the rule took place; *Nirmal* v. *Union of India*, (1991) Supp 2 SCC 363, paragraphs 3 and 5.

Rules

So long as a Rule framed under article 309 is not duly amended, it is binding on the Government and its action in matter covered by the rules must be regulated by the Rules; *Bhatnagar* v. *Union of India*, (1991) 1 SCC 544, paragraph 13 (3 Judges).

A rule made in exercise of the power under the proviso to article 309 constitutes law within the meaning of article 235. For the same reason, such rule may be struck down only on such ground as may invalidate a legislative measure, *e.g.* violation of articles 14 and 16 of the Constitution, and not because the court considers it to be unreasonable; *Bansal* v. *Union of India*, AIR 1993 SC 978, paragraph 21.

If the Rules are amended and the Government withdraws the requisition, before the candidates are called for interview pursuant to the advertisement, but the Service Commission goes on with the selection in terms of the original Rules, a candidate so selected acquires no vested right; *Jaiswal* v. *Debi*, (1992) 1 UJSC 731, paragraph 5.

A question of conflict arises where a service has got two sets of Rules made under article 309 *e.g.*, General Recruitment Rules and Special Recruitment Rules (applicable to a particular Department such as the Motor Vehicles Branch); *Raghunath* v. *State of Karnataka*, AIR 1992 SC 81, paragraph 7.

Rule-making power

Rules as to service matters may be made—

(a) under article 309, proviso, or

(b) subject to law made by competent legislation) by executive orders; *State of Haryana* v. *Piara*, (1992) 4 SCC 118, paragraph 21.

Salary

It has been laid down by a Constitution Bench, that the salary drawn on the date of retirement cannot be re-opened as a result of any enhancement made at a later date for persons retiring subsequently; *India Ex-Services League* v. *Union of India*, AIR 1991 SC 1182, paragraphs 21 and 22.

Seniority

Even where the order of appointment may have stated that the appointment was temporary or stop gap, *etc.*, yet, where it is established that the appointee has been working in that post for a long period (number of years) without break, the court may apply the principle of "continuous officiation" and hold that the appointee be deemed to have been regularised; *Nayar* v. *Union of India*, AIR 1993 SC 1574; *State of Haryana* v. *Piara*, AIR 1992 SC 2130, paragraph 12 (3 Judges).

A subsequent restructuring of the service or delay in holding the selection for which the employee was not responsible cannot take away his seniority for promotion which he had acquired prior to the date of restructure; *Nirmal* v. *Union of India*, (1991) Supp 2 SCC 263, paragraphs 4-6.

It is open to the State to lay down any criteria which it thinks appropriate, for determining seniority in service and it is not competent for the court to strike down such Rule except on the ground that it is arbitrary or it results in inequality of opportunity amongst employees belonging to the same class, which would offend article 14 or 16 of the Constitution; *Dhan Singh* v. *State of Haryana*, (1991) 2 Supp SCC 190, paragraph 10.

Where promotees have acquired a higher qualification or are selected by the Public Service Commission, Government can give them some weightage in seniority. There is no improper discrimination and court cannot interfere with such a policy decision of the Government; *State of Andhra Pradesh* v. *Muralidhar*, AIR 1992 SC 922.

Where a person has been denied seniority by a wrong application of the rules or without any reasonable ground, the court may direct the competent authority to place him in the higher grade with effect from the date when his junior was placed therein, with consequential monetary benefits; *Dharam* v. *Administrator*, (1991) 17 ATC 925, paragraph 4.

In general, the court would not interfere with rules, or even executive instructions laying down the principles of seniority if they are 'reasonable, just and equitable, *Devdutta* v. *State of Madhya Pradesh*, (1992) 19 ATC 154 (SC), paragraph 17.

As between employees serving in the same service or cadre, seniority shall be determined by the Rules made under article 309. If there is no unconstitutionality in such Rules, the seniority *inter se* must be determined according to the criteria laid down in such rules, *e.g.*, rank and merit (where selected by the P.S.C.); the court cannot lay down any other criteria; *State of Tamil Nadu* v. *Pari*, (1991) 3 SCJ 302, paragraph 10 (3 Judges).

The interpretation of Rules as to quota consistent with the Constitution, may be a difficult task. No question of seniority arises till a person is appointed substantively to a cadre post under the Rules; *Chopra* v. *State of Haryana*, (1992) 19 ATC 493 (SC), paragraphs 10-17.

When a person is appointed to a post according to the Rules, his seniority is to be counted from the date of his appointment and not according to the date of his *confirmation; The Direct Recruit Class-II Engineering Officers' Association* v. *State of Maharashtra*, (1990) 2 SCJ 377, paragraph 13 (CB).

If Rules have been made fixing a quota or ratio for appointment from the two sources, then *inter se* seniority has to be guided by the quota rules; *Saxena* v. *State of Uttar Pradesh*, (1992) 19 ATC 96 (SC), paragraphs 6-7; *The Direct Recruit Class-II Engineering Officers' Association* v. *State of Maharashtra*, (1990) 2 SCC 715, paragraph 47.

Government can make rules laying down that persons recruited on a regular basis shall be placed (in seniority) below persons regularised. There is no illegality calling for court intervention. The former came into service after passing a competitive examination; *Bhatnagar* v. *Union of India*, (1991) 1 SCC 544, paragraphs 8, 9 and 12 (3 Judges).

Where the Rules themselves make a distinction between persons appointed in the Directorate and the subordinate services as separate cadres, and such Rules are not held to be unconstitutional, a claim that common seniority should be maintained between the two cadres, is untenable; *Som Raj* v. *State of Haryana*, (1990) 2 SCJ 1, paragraphs 5-6.

Service matters: Judicial interference

Judicial interference in service matters is called for only in order to examine that the action challenged before the court is from the point of—

(a) fundamental rights,
(b) statutory provisions,
(c) rules and instructions,
(d) fairness.

State of Haryana v. *Piara*, (1992) 4 SCC 118, paragraph 21.

Temporary service

The State should not keep a person in temporary or *ad hoc* service for a long period. It should take steps for his regularisation; *Dharwad District P.W.D. Literate Daily Wage Employees Association* v. *State of Karnataka*, (1990) 2 SCC 396, paragraph 23.

Termination

If the termination (of an employee) is arbitrary, it will be violative of article 16, even though the employee is of an *ad hoc*, temporary or officiating status, or even casual employee; *Shrilekha* v. *State of Uttar Pradesh*, (1991) 1 SCC 212.

Transfer

When a person belongs to a service or cadre which is transferable, then, in the absence of any statutory restrictions, a person appointed to the cadre or service is transferable from one post to

another, in the interests of public service. In such a case, transfer is an incident of the service and the employee cannot complain except where (a) it is ordered in violation of some mandatory statutory rule, (b) if it is actuated by *mala fides*, that is, some collateral purpose other than the interests of the administration. The court cannot, therefore, interfere on the mere ground that the transfer was made at the request of the employee and the competent authority granted it to avoid hardship; *Shilpi* v. *State of Bihar*, (1991) Supp 2 SCC 659, paragraphs 3-4.

Where employees are transferred from a Government Department to a statutory corporation and provision is made in the statute (or in the directions issued thereunder) that their existing conditions of service would not be adversely affected by the transfer, the court would interfere if the corporation frames regulations to change the conditions of service to the disadvantage of the employees, *e.g.*, in the matter of the age for retirement; *Dubey* v. *M.P.S.R.T.C.*, (1991) Supp 1 SCC 426, paragraph 11.

Vacancies

State is not bound to fill up a vacancy. But the decision not to fill up a vacancy has to be taken *bona fide* for good reasons. The mere fact that a person's name appears in the merit list does not give him a right to be appointed. But if the vacancy is filled up, the comparative merit (as reflected in the recruitment test) has to be respected and no discrimination is permissible; *Shankaran* v. *Union of India*, (1991) 3 SCC 47, paragraph 7a.

310. Tenure of office of persons serving the Union or a State.—(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the [1][***] Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor [2][***] of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor [3][***] as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period, that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Notes on Article 310

Pleasure

The doctrine of pleasure codified in article 310(1) of the Constitution is a legacy of the English. It means that a servant of the Crown holds office during the pleasure of the Sovereign. But in order to protect civil servant against the political interference, article 311 introduces certain safeguards. Moreover, a specific contract can override the doctrine of pleasure; *Purshottam* v. *Union of India*, AIR 1958 SC 36, 41; *Motran* v. *Union of India*, AIR 1965 SC 600.

---

1. The words "or as the case may be, the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
3. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

Where the doctrine of pleasure applies there are no limitations other than those flowing from the Constitution or from rules or orders under the Constitution; *Madho Singh* v. *State of Bombay*, AIR 1960 Bom 285.

Exceptions to the doctrine are found in the Constitution as illustrated by articles 124, 148, 217, 218 and 324. It is also subject to fundamental rights; *State of Orissa* v. *Dhirendranath*, AIR 1961 SC 1715; *Union of India* v. *More*, AIR 1962 SC 630, 633.

Contract

As to the effect of contract, *see State of Gujarat* v. *Kampaval*, 1 (1992) 3 SCC 226.

Expiry of term

Where article 310 (2) applies and the service terminates on expiry of period then—

(a) no notice required.

(b) there is no question of premature retirement.

State of Gujarat v. *Kampaval*, (1992) 3 SCC 226; *Aggarwal* v. *Union of India* (1992) 2 UJSC 266.

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

[1][(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges [2][***]:

[3][Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]

---

1. Subs. by the Constitution (Fifteenth Amendment) Act, 1963, sec. 10, for clauses (2) and (3).
2. Certain words omitted by the Constitution (Forty-second Amendment) Act, 1976, sec. 44 (w.e.f. 3-1-1977).
3. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 44, for certain words (w.e.f. 3-1-1977).

Notes on Article 311

Misconduct

The Punjab Police Manual makes a distinction between 'misconduct' and 'gravest misconduct'. If the court objectively finds that the conduct in question is not of the gravest kind, then only a minor punishment can be awarded. In such a case, an order of dismissal would be set aside; *State of Punjab* v. *Ram*, (1992) 4 SCC 54 (3 Judges).

Relief by Supreme Court

The extraordinary powers of the Supreme Court are not fettered by any limitation. The court can grant any relief to meet the interests of justice on equitable grounds, *e.g.*, to direct the State to make some *ex gratia* payment to an employee whose appeal has been dismissed. *See* the undermentioned cases:

(i) *Triveni* v. *State of Uttar Pradesh*, (1992) 1 SCJ 27, paragraph 31.

(ii) *Rajendra* v. *State of Madhya Pradesh*, (1992) Supp 2 SCC 413.

(iii) *State of Uttar Pradesh* v. *Sani*, (1992) 19 ATC 264 (SC).

(iv) *Prabhuswamy* v. *K.S.R.T.C.*, 19 ATC 266 (SC).

The court may reduce a punishment of 'removal' into that of compulsory retirement; *Mohapu* v. *Sr. Supdt.*, (1991) Supp 2 SCC 503, paragraph 6.

Where the court directed reinstatement of a probationer who had been discharged without a lawful ground the court further directed that she would not be entitled to the salary from the date of her discharge till that of her reinstatement, on a collateral ground; *Neera* v. *L.I.C.*, (1990) 1 SCJ 321, paragraph 14.

The powers of the Supreme Court under article 136 to do substantial justice being wide enough, the court may make compassionate orders even where the appellant has no legal right in his favour, *e.g.*, where a temporary employee has been discharged on the availability of a regular recruit through the U.P.S.C., or he is discharged by notice according to Rules; *Triveni* v. *State of U.P.*, AIR 1992 SC 496, paragraph 28.

Administrative Tribunal

In view of section 14(1)(b) of the Specific Relief Act, 1963 the court cannot direct the employer to reinstate a dismissed employee, even though as a result of the declaration of the court that the dismissal was wrongful or unconstitutional, the Government may be obliged to put him back to his post or another post of the same status; *Om Prakash* v. *State of Uttar Pradesh*, (1991) Supp 2 SCC 436, paragraph 3.

There may be circumstances in which the court may not on equitable grounds, interfere with an order of reinstatement which has been already implemented; *Union of India* v. *Chhida*, (1991) Supp 2 SCC 16, paragraph 5.

The High Court, in writ jurisdiction, is not a court of appeal. It cannot interfere on the ground of inadequacy or unreliability of the evidence on which the disciplinary authority has acted. It cannot review the evidence and come to its own conclusions; *Maharashtra S.B.S.E.* v. *Gandhi*, (1992) 2 SCC 716, paragraph 10, 38.

After the establishment of an Administrative tribunal under the Administrative Tribunals Act, 1985 an application under section 19 of that Act would lie to the Tribunal, in place of the High Court under article 226 of the Constitution. *See* the undermentioned cases:

(i) *Union of India* v. *Deep*, (1992) 4 SCC 432, paragraphs 3 and 6.

(ii) *C.S.I.R.* v. *Labour Court*, (1992) 19 ATC 414, paragraph 2.

So far as employees of the Government or authorities coming under article 323A(1) of the Constitution and section 14 of the Administrative Tribunals Act, 1985 are concerned, the jurisdiction of the civil courts now belongs to the Tribunal set up under the Act [sec. 15(1)], and the remedy of the aggrieved employee is by an application under section 19 of the Act; *Ashok* v. *Union of India*, (1992) 20 ATC 501 (Pat).

By reason of section 28(b) of the Administrative Tribunal Act, 1985 the Administrative Tribunal shall not be entitled to exercise its jurisdiction over any matter which is pending before an Industrial Tribunal under the Industrial Disputes Act, 1947, *e.g.*, in a conciliation proceeding under section 33 of the Act; *Sat Pal* v. *Dir., C.P.W.D.*, (1992) 19 ATC 544 (Del).

Appeal lies to the Supreme Court from decision of Administrative Tribunal by special leave.

This jurisdiction of the Supreme Court has not been effected by article 323A(2)(d) of the Constitution.

The Supreme Court would interfere where the matter in question falls outside the jurisdiction of the Administrative Tribunal under the governing statute.

This proviso is attracted when the authority is satisfied (from the material placed before it) that it is not reasonably placed to hold a departmental enquiry. The decision to do so cannot rest solely on the *ipse dixit* of the concerned authority. It is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of whim or caprice. There must be independent material to justify the dispensing with the inquiry envisaged by article 311(2); *Jaswant* v. *State of Punjab*, (1991) 1 SCC 362, paragraph 5.

Abolition of post

Even in the case of a permanent post, article 311(2) is not attracted, simply because abolition of a post for administrative exigencies could not be said to be a 'punishment' for some misconduct, and also because the creation and abolition of a post is the exclusive concern of the executive. The court thus upheld the abolition of the posts of Election Commissioners within 3 months of their creation; *Dhanoa* v. *Union of India*, AIR 1991 SC 1745.

Where a post (even if it is a permanent post) is abolished, article 311(2) is not attracted. There is no "punishment" and no "misconduct"; *Kamra* v. *N.I.A.*, (1992) 2 SCC 36, paragraphs 4 and 5.

Adverse remarks

Where there is no rule requiring the competent authority to record or communicate reasons for rejecting a representation against adverse remarks, such order of rejection cannot be challenged merely on the ground of non-recording of reasons, provided it was passed in a fair and just manner, after considering the materials on record. The competent authority may show the reasons from the notings in the file and other materials on the record; *Government of India* v. *Nambudri*, AIR 1991 SC 1261, paragraphs 10 and 11.

Appeal

For article 311(2), proviso to apply, it is not necessary for the Government to wait until the disposal of appeal or revision presented against conviction. But if the conviction is subsequently set aside, on appeal or otherwise, the order of dismissal ceases to have effect and the employee is entitled to be reinstated forthwith and to recover arrears of salary from the date of the challenge of dismissal till he is properly dismissed in compliance with article 311(2); *Babu Lal* v. *State of Haryana*, (1991) 2 SCC 35, paragraph 7.

Civil post

The provisions of article 311 extend to all persons holding a civil post under the Union or a State, including members of the all India and State Service. Members of the Defence Services are

thus excluded from the scope of this article, but not police officers. The only persons who are excluded from the purview of article 311(1) [which is in the nature of an exception to the general provision in article 310(1)] are—

(a) members of Defence Services, and

(b) persons holding any post connected with defence, but not Police Officers.

Central Bank v. *Bernard*, (1991) 1 SCC 319, paragraph 5.

Compulsory retirement

Compulsory retirement (if penal) must comply with article 311; *Ram Ekbal Sharma* v. *State of Bihar*, AIR 1990 SC 1368.

Even though the order of compulsory retirement may be couched in innocuous language without making any imputation against the Government servant, the court may, in appropriate cases, lift the veil to find out whether the order is based on any misconduct of the Government servant or whether it is *bona fide*; *Ram Ekbal Sharma* v. *State of Bihar*, AIR 1990 SC 1368.

(i) Compulsory retirement in the public interest carries no stigma under rule 16(3) of the All India Services (Death-cum-Retirement) Rules, 1958 and the officer retains full pensionary benefits.

(ii) Loss of efficiency at that age is a ground of public interest. It is not a punishment. Hence article 311(2) is not attracted.

(iii) Even if adverse entries are not communicated, the order is valid if there are no *mala fides*.

Baikuntha v. *C.D.M.O.*, (1992) 2 SCC 299.

Even an adverse report for a *single* year may constitute sufficient material for the Government to come to a decision that the employee's standard of work was not satisfactory and should therefore be retired. The reason is that the nature of the delinquency, and whether it is of such a nature as to require compulsory retirement is for the departmental authorities to decide. The court will not interfere with the exercise of that power except on the ground of *mala fides etc.*; *P&T Board* v. *Murthy*, (1992) 2 SCC 317, paragraph 5.

Compulsory retirement under article 465A, Note 1 of the Civil Service Regulations would not attract article 311(2) even if, in fact, the order is passed on the ground of misconduct, inefficiency or the like. Government servant does not, in such a case, lose terminal benefits. No penal consequences are involved. Such an order does not amount to dismissal or removal; *Baikuntha* v. *C.D.M.O.*, (1992) 2 SCC 299, paragraphs 30 and 34.

Assuming that there is no legal or constitutional infirmity, a single adverse entry or adverse entries in the last 2 years, casting doubt upon the integrity of the employee can be the basis for compulsory retirement in the public interest; *Post and Telegraph Board* v. *Murthy*, (1992) 2 SCC 317.

Confirmation

Where the appointment of a temporary employee is made for an unspecified or indefinite period of time, he cannot claim that he has been automatically confirmed on the expiry of the period of appointment. It is true, that the period can be extended indefinitely. But that does not mean that the services of the incumbent holding the post would be extended; *Dhiraj* v. *Union of India*, AIR 1991 SC 73.

Compulsory retirement

Where an order of compulsory retirement has become final by an appellate order but the petitioner prays for reconsideration of that order, what is to be determined by the authority (or Tribunal) on such prayer, is not whether the order of compulsory retirement was vitiated on the

merits (as is done while hearing an appeal), but whether the conditions for reconsideration, according to the relevant Rules or circulars, were fulfilled; *State of Rajasthan* v. *Shiv*, AIR 1992 SC 1587, paragraphs 8 and 9 (3 Judges).

An order of compulsory retirement is not liable to be quashed on the mere ground that uncommunicated adverse remarks were taken into consideration; *Baikuntha* v. *C.D.M.O.*, (1992) 2 SCC 299 paragraphs 34 (3 Judges).

Copy of report

Where the action proposed is not based on a report, or the disciplinary authority itself is the Inquiry Officer, the omission to supply a copy thereof to the delinquent will not vitiate the proceedings; *Union of India* v. *Ramjan*, (1991) 1 SCC 588, paragraphs 16-18 (3 Judges).

Criminal proceedings

Where the employee was acquitted on the merits and was reinstated on the basis thereof, and thereafter allowed to retire on superannuation, it would be against the interest of justice, to re-start the disciplinary proceedings against him on the basis of certain observations of the High Court in the case relating to a co-accused; *Prafulla* v. *State of Maharashtra*, AIR 1992 SC 2209.

Date of birth

A question as to disputed age would not ordinarily be gone into in a writ petition because it is a question of fact. A decree passed against a University or Board to correct the date of birth is not binding on the Government if the State has not been made a party. It can only be treated as evidence; *Director* v. *Sitadevi*, AIR 1991 SC 308.

Where an employee has throughout his career accepted a particular date as his date of birth, by his own statement, and near about the date of his superannuation, he makes a representation and files some documents, the order of the relevant authority, made upon a consideration of those documents, cannot be assailed on the ground that the order of rejection of his representation was made without giving him a personal hearing; *Executive Engineer* v. *Rangadhar*, (1992) 2 UJSC 453, paragraph 3.

Dismissal

When a government servant has been dismissed in contravention of either article 311(1) or article 311(2), or of a mandatory statutory rule, or of the principles of natural justice, he would be entitled to bring a suit against the Government; *State of Punjab* v. *Ram*, AIR 1992 SC 2188, paragraph 11.

Whether any order discharging an employee, in exercise of the power conferred by the conditions of service amounts to an order of "dismissal" would depend upon several factors, such as—

(a) the nature of the enquiry, if any, that may have been held;

(b) the proceedings taken in the enquiry;

(c) the substance of the final order passed on such inquiry;

(d) material that existed prior to such order.

Fresh inquiry

Where an order of dismissal is set aside by any court on the merits, but the competent authority decides to hold a fresh departmental proceedings against the delinquent officer, he will not be entitled to be reinstated or to recover arrears of pay since the date of the original order of dismissal on the ground that it was declared by administrative authority to be a nullity; *Nelson* v. *Union of India*, AIR 1992 SC 1980, paragraph 10.

Inquiry

The reasons recorded must *ex facie* show that it was not reasonably practicable to hold a disciplinary inquiry, and must not be vague or irrelevant; *C.S.O.* v. *Singasan*, (1991) 1 SCC 729, paragraph 5.

Article 311(1) does not require that the inquiry should be initiated or conducted by a particular level of authority; *Srinivasa* v. *C.A.G.*, (1993) 1 SCC 419, paragraphs 4-6.

Legal assistance

Ordinarily, natural justice does not postulate a right to be represented or assisted by a lawyer, in departmental inquiries. But in particular circumstances, the rules of natural justice or fairness, may require that the person charged should have professional help if he so desires; *I.I.T.* v. *Union of India*, (1991) Supp 2 SCC 12, paragraph 15 (3 Judges).

Ordinarily, natural justice does not postulate a right to be represented or assisted by a lawyer, in departmental inquiries. But in particular circumstances, the rules of natural justice or fairness may require that the person charged should have professional help, if he so desires; *Aggarwal* v. *H.S.D.C.*, (1991) 2 SCC 283, paragraphs 6 and 8.

No general principle regarding representation by a lawyer which is valid in all cases, can be enunciated. A decision has to be reached on a case to case basis on the situation particularities and the special requirement of justice of the case. Where the Presiding Officer is stated to be a man of law, justice would require that the other party who has no legal background is represented by a lawyer; *Aggarwal* v. *H.S.D.C.*, AIR 1991 SC 1221.

Malice

Malice will be proved—

(i) where it is shown that the discretionary power was exercised for an unauthorised or extraneous purpose, *e.g.*, where there is nothing on the record to justify the order of premature retirement of the petitioner or the alleged 'public interest' is founder on non-existent facts or circumstances, or on no evidence;

(ii) where it is shown that the order is arbitrary or perverse or, in other words, no reasonable person could form such opinion on the given material.

In case of post for fixed tenure, malice will be presumed; *Baikuntha* v. *C.D.M.O.*, (1992) 2 SCC 299, paragraph 34; *Aggarwal* v. *Union of India*, (1992) 3 SCC 526.

Opportunity

Though the delinquent is no longer entitled to make any representation to the disciplinary authority as to the nature or quantum of the punishment proposed, the Constitution (Forty-second Amendment) Act, 1976 has not taken away the delinquent's right of appeal against the final order in the disciplinary proceedings, where he can show that the findings of the Inquiry Officer or any of them have not been established on the materials before the Inquiry Officer and that the Punishing Authority has been influenced by such findings; *Union of India* v. *Ram Jan*, (1991) 1 SCC 588, paragraphs 15-17.

Penal order

Even where an order is innocuous on its face and purports to be an order of discharge in accordance with the terms and conditions of the appointment, the court can lift the veil and find out the real nature of the order and to set it aside if it is penal in nature and was made without giving the employee any opportunity to show cause why he should not be dismissed for the misconduct alleged; *Babu Lal* v. *State of Haryana*, AIR 1991 SC 1310, paragraph 8.

Reinstated employee

Where the reinstated employee has actually discharged his duties without any such fresh fixation of pay made in the order of reinstatement, he should get his full salary for that period; *Nelson* v. *Union of India*, AIR 1992 SC 1980, paragraph 14 (3 Judges).

Removal

According to the Departmental Rules, there is some difference between dismissal and removal, as to their consequences. Thus, while a person 'dismissed' is ineligible for re-employment under the Government, no such disqualification attaches to person 'removed'; *Dattatraya Mahadev Nadkarni* v. *Corporation of Greater Bombay*, (1992) 2 SCC 547, paragraphs 6-8.

Seniority

The court will not disturb a seniority after a long lapse of time from when it as fixed; *Dogra* v. *State of Himachal Pradesh*, (1992) 4 SCC 454, paragraphs 10 and 11.

Temporary appointment

In *State of Uttar Pradesh* v. *Kaushal*, (1991) 1 SCC 691, the court has summed up the position as under:

"(a) If, on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employees are terminated, no exception can be taken to such an order of termination. A Government servant has no right to hold the post; his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Government servants.

(b) However, this court has made it clear that if the competent authority decides to take punitive action, it may do (only) by holding a formal inquiry by framing charges and giving an opportunity to the Government servant in accordance with the provisions of article 311 of the Constitution; *Triveni* v. *State of Uttar Pradesh*, AIR 1992 SC 496, paragraphs 26 and 27.

Where an appointment order states that the post was temporary, though likely to continue for an indefinite period, the person appointed does not acquire a legal right to extension, and his services may be terminated by issuing notice under the Civil Services (Temporary) Rules, 1949; *Dhiraj* v. *Union of India*, (1991) Supp 2 SCC 203, paragraph 8.

If, on the perusal of character roll entries or on the basis of preliminary inquiry into the allegations made against an employee, the Government is satisfied that he is not suitable, and, consequently the services of the temporary employee are terminated, then no exception can be taken to such termination. Such termination is not punitive; *State of Uttar Pradesh* v. *Kaushal*, (1991) 1 SCC 691; *Saxena* v. *State of Uttar Pradesh*, (1992) Supp 1 SCC 524, 534.

Tenure post

A "Tenure post" means a post held for a specified term. The appointment terminated on the expiry of that term. The question of superannuation or of premature retirement does not arise in the case of such post; *Aggarwal* v. *Union of India*, (1992) 2 UJ SC 266, paragraph 16.

Appointment to a tenure post for which there is fixed period comes to an end on expiry of the period. A person so appointed cannot be compulsorily retired. An order of compulsory retirement passed against such a person on the basis of (alleged) "public interest" is liable to be quashed *Aggarwal* v. *Union of India*, (1992) 3 SCC 526, paragraphs 16-17.

Term : Expiry of

There is no question of application of article 311(2) where a person's services are sought to be terminated at the expiry of the term for which he was engaged or at the expiry of the period of notice by which, in accordance with the conditions of his services, his services could be terminated, provided of course, the contract itself is not unconstitutional, say, for contravention of article 311(2); *Triveni* v. *State of Uttar Pradesh*, AIR 1992 SC 496, paragraphs 26 and 27 (3 Judges).

312. All-India Services.—(1) Notwithstanding anything in [1][Chapter VI of Part VI or Part XI], if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services [2][(including an all-India judicial service)] common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

[2][(3) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in article 236.

(4) The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.]

Notes on Article 312

No law under clause (3) has been made so far.

[3][312A. Power of Parliament to vary or revoke conditions of service of officers of certain services.—(1) Parliament may by law—

(a) vary or revoke, whether prospectively or retrospectively, the conditions of service as respects remuneration, leave and pension and the rights as respects disciplinary matters of persons who, having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India before the commencement of this Constitution, continue on and after the commencement of the Constitution (Twenty-eighth Amendment) Act, 1972, to serve under the Government of India or of a State in any service or post;

(b) vary or revoke, whether prospectively or retrospectively, the conditions of service as respects pension of persons who, having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India before the commencement of this Constitution, retired or otherwise ceased to be in service at any time before the commencement of the Constitution (Twenty-eighth Amendment) Act, 1972:

Provided that in the case of any such person who is holding or has held the office of the Chief Justice or other Judge of the Supreme Court or a High Court, the Comptroller

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 45, for "Part XI" (w.e.f. 3-1-1977).
2. Ins. by the Constitution (Forty-second Amendment) Act. 1976, sec. 45 (w.e.f. 3-1-1977).
3. Ins. by the Constitution (Twenty-eighth Amendment) Act, 1972, sec. 2 (w.e.f. 29-8-1972).

and Auditor-General of India, the Chairman or other members of the Union or a State Public Service Commission or the Chief Election Commissioner, nothing in sub-clause (a) or sub-clause (b) shall be construed as empowering Parliament to vary or revoke, after his appointment to such post, the condition of his service to his disadvantage except in so far as such conditions of his service to his disadvantage except in so far as such condition of service are applicable to him by reason of his being a person appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India.

(2) Except to the extent provided for by Parliament by law under this article, nothing in this article shall affect the power of any Legislature or other authority under any other provision of this Constitution to regulate the conditions of service of persons referred to in clause (1).

(3) Neither the Supreme Court nor any other court shall have jurisdiction in—

(a) any dispute arising out of any provision of, or any endorsement on, any covenant, agreement or other similar instrument which was entered into or executed by any person referred to in clause (1), or arising out of any letter issued to such person, in relation to his appointment to any civil service of the Crown in India or his continuance in service under the Government of the Dominion of India or a Province thereof;

(b) any dispute in respect of any right, liability or obligation under article 314 as originally enacted.

(4) The provisions of the article shall have effect notwithstanding anything in article 314 as originally enacted or in any other provision of this Constitution.]

313. Transitional provisions.—Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

314. Provision for protection of existing officers of certain services.—*[Rep. by the Constitution (Twenty-eighth Amendment) Act, 1972, sec. 3 (w.e.f. 29-8-1972).]*

CHAPTER II — PUBLIC SERVICE COMMISSION

315. Public Service Commissions for the Union and for the States.—(1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.

(4) The Public Service Commission for the Union, if requested so to do by the Governor [1][***] of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

(5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question.

316. Appointment and term of office of members.—(1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor [1][***] of the State:

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

[2][(1A). If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some persons appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State in the case of a State Commission, may appoint for the purpose.]

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of [3][sixty-two years], whichever is earlier:

Provided that—

(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor [1][***] of the State, resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 317.

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

Notes on Article 316

The requirement in article 316(1) proviso, as to one half members being persons who have held

---

1. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956 sec. 29 and Sch.
2. Ins. by the Constitution (Fifteenth Amendment) Act. 1963, sec. 11.
3. Subs. by the Constitution (Forty-first Amendment) Act, 1976, sec. 2, for "sixty years".

office under the Government is directory. Hence in a State Public Service Commission comprising eleven members, a challenge to the seventh member (who belongs to the non-service category) is not sustainable in law; *Jai Shankar Prasad* v. *State of Bihar*, (1993) 2 SCC 597.

317. Removal and suspension of a member of a Public Service Commission.—(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor [1][***] in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,—

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour.

Notes on Article 317

Important judgments as to Public Service Commissions are the following:—

(i) *Reference under article 317(1)*, AIR 1983 SC 996.

(ii) *UP Public Service Commission* v. *Suresh*, AIR 1987 SC 1953.

(iii) *K.P. Sen* v. *State of West Bengal*, AIR 1966 Cal 356.

(iv) *Hargovind* v. *Raghukul*, AIR 1979 SC 1109.

Proportion

The validity of the appointment of a particular member cannot be challenged on the ground that he did not belong to the category which was required to make up the 50% proportion; *Jai* v. *State of Bihar*, (1993) 2 SCC 597, paragraphs 9-12.

Misconduct

In article 124(4) the word 'proved' qualifies the word 'misconduct' while that qualification is absent in article 317(1).

1. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

Such proof in the case of a Supreme Court Judge, comes from [the law enacted by Parliament under clause (5) of article 124], the inquiry under the Judges (Inquiry) Act, 1968, which is absent in the case of a member of a Public Service Commission. In the case of a member of the Public Service Commission, the inquiry and proof of misbehaviour shall be made by the Supreme Court, while in the case of a Supreme Court Judge, that is to be done by the Committee set up under the Judges (Inquiry) Act, 1968; *Sub-Committee* v. *Union of India*, AIR 1992 SC 320, paragraph 45.

If the Chairman of a State Public Service Commission is slapped on the face by another, it is a case of misbehaviour under article 317(1) and renders the latter member liable to be removal.

Infirmities under article 317(3)(c) must be such as to disable the member from the efficient discharge of his functions and must be of post—appointment origin. Where a university professor is appointed a member of State Public Service Commission and is known to be blind, he cannot be removed on the ground of infirmity; *Jai Shankar Prasad* v. *State of Bihar*, (1993) 2 SCC 597.

The provisions of proviso (b) to article 316 and the word 'only' in article 317(a) make it clear that the power to remove a Public Service Commission has been vested exclusively in the President.

Hence, no court can exercise this power even by means of the writ of *quo warranto*.

The determination as to whether a member should be removed on the ground of infirmity is left to the subjective satisfaction of the President as to whether the infirmity is such that it incapacitates the particular member for discharging the functions of his office; *Jai* v. *State of Bihar*, (1993) 2 SCC 597, paragraphs 13, 15 and 18.

In a reference under article 317 regulating enquiry and report on the allegations made against the Chairman Manipur State Public Service Commission, the Supreme Court directed that direct evidence in relation to the reference should be recorded by a sitting Judge of the High Court; JT (1994) 2 SC 63.

Members of State Public Service Commission are not equal to the Chairman and cannot claim the same facilities as the Chairman; *Bihar Public Service Commission* v. *Dr. Shiv Jatan Thakur*, JT(1994) SC 681.

318. Power to make regulations as to conditions of service of members and staff of the Commission.—In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor [1][***] of the State may by regulations—

(a) determine the, number of members of the Commission and their conditions of service; and

(b) make provision with respect to the number of members of the staff of the Commission and their conditions of service:

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.

319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members.—On ceasing to hold office—

(a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service

---

1. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956 sec. 29 and Sch.

Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

320. Functions of Public Service Commissions.—(1) It shall be the duty of the Union and the State Public Service Commission to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so

referred to them and on any other matter which the President, or, as the case may be, the Governor [1][***] of the State, may refer to them:

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor [2][***] as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect maybe given to the provisions of article 335.

(5) All regulations made under the proviso to clause (3) by the President or the Governor [1][***] of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

Notes on Article 320

Some of the important decisions on article 320 are the following:—

(i) *Neelima* v. *State of Haryana*, AIR 1987 SC 169 (Commission's duty to forward names).

(ii) *Dr. Keshav Ram Pal* v. *Uttar Pradesh Higher Education Services Commission*, (1986) 1 SCC 671 (Method of selection).

(iii) *State of Uttar Pradesh* v. *Rajasthan*, AIR 1988 SC 162 (Re-opening selection).

If before the selection is held, the Government withdraws its requisition from the Public Service Commission, neither the candidate nor the Commission itself can insist on continuing the process of selection; *Jaiswal* v. *Debi*, AIR 1992 SC 749, paragraph 5.

When the Public Service Commission issues an advertisement at the behest of the Government, a candidate who is otherwise eligible according to the relevant Rules acquires a right to be considered for selection in accordance with those Rules as they existed at the date of the advertisement cannot be deprived of that right by any subsequent amendment of the Rules unless it is retrospective; *N.T. Bevin Katti* v. *Karnataka Public Service Commission*, AIR 1990 SC 1233.

A selection by the Public Service Commission does not confer any right to the post upon the candidate and the Government has no legal duty to fill up all or any of the vacancies. At the same time, it is now established that the Government is to act fairly and has no licence of acting in an arbitrary manner; *Shankaran* v. *Union of India*, (1991) 3 SCC 47 (CB).

If the Government wants to disapprove or reject the list submitted by the Public Service Commission, it ought to do so within a reasonable time of the receipt of the list and for reasons to be recorded and the Government cannot accept a part of the list and reject the rest; *Asha* v. *State of Jammu & Kashmir*, (1993) 2 SCC 573, paragraphs 7 and 8.

Even where the court finds that the action of the appointing authority in making an appointment overriding the selection made by the Public Service Commission was arbitrary, the court may not,

---

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. The words "or Rajpramukh" as the case may be" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

on humanitarian grounds, quash such appointment after a long lapse of time; *Puttaswamy* v. *Chief Justice*, (1991) Supp 2 SCC 421, paragraphs 12 and 17.

321. Power to extend functions of Public Service Commissions.—An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

322. Expenses of Public Service Commission.—The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

323. Reports of Public Service Commissions.—(1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reason for such non-acceptance to be laid before each House of Parliament.

(2) It shall be the duty of a State Commission to present annually to the Governor [1][***] of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor [1][***] of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor [2][***] shall, on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

[3][*PART XIVA*

TRIBUNALS

323A. Administrative tribunals.—Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may—

(a) provide for the establishment of an administrative tribunal for the Union and a

---

1. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. The words "or the Rajpramukh" as the case may be" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
3. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 46 (w.e.f. 3-1-1977).

separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the cause of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under clause (3) of article 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Notes on Article 323A

The Administrative Tribunals Act, 1985 is a legislation in terms of article 323A. By setting up a tribunal under that Act, for the resolution of service disputes, the jurisdiction of the High Court in regard to such matters is intended to be taken away and is intended to be vested in the Tribunal; *S.P. Sampath Kumar* v. *Union of India*, AIR 1987 SC 386: (1987) 1 SCC 124.

Co-operative Societies

Under section 14(2) of the Administrative Tribunals Act, 1985, as amended, co-operative societies can be added to the list by notification. But until they are so notified by Government, jurisdiction of courts in regard to service matters relating to such societies remains unaffected. *See* the undermentioned cases:

(i) *Ashwani* v. *P.C.D.F.*, (1992) 4 SCC 17.

(ii) *K.M.I.* v. *Pandurang*, (1992) 4 SCC 719, paragraph 2.

Interference by the Tribunal

The Administrative Tribunal will not interfere with an order of rejection by the Tribunal, of an application for reinstatement on the grounds of inordinate and unexplained delay; *Bhoop* v. *Union of India*, AIR 1992 SC 1414. paragraph 2.

The Tribunal would not ordinarily interfere with the decision of the competent authority to compulsorily retire an employee on the ground of unfitness, in the absence of *mala fides*, or arbitrariness, or in the absence of any material on the record to show that compulsory retirement of the petitioner was not in the public interest.

Principles of natural justice are not attracted in the case of compulsory retirement under the relevant Rules; *Baikuntha* v. *C.D.M.O.*, AIR 1992 SC 1020, paragraphs 29, 32 and 33 (3 Judges).

323B. Tribunals for other matters.—(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely:—

(a) levy, assessment, collection and enforcement of any tax;

(b) foreign exchange, import and export across customs frontiers;

(c) industrial and labour disputes;[1]

(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;

(e) ceiling on urban property;

(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;

(g) production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;

[1][(h) rent, its regulation and control and tenancy issues including the rights, title and interest of landlords and tenants—,]

[2][(i) offences against laws with respect to any of the matters specified in sub-clause (a) to (h) and fees in respect of any of those matters;

[2][(j) any matter incidental to any of the matters specified in sub-clause (a) to [3][(i)].

(3) A law made under clause (1) may—

(a) provide for the establishment of a hierarchy of tribunals;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under article 136 with respect to all or any of the matters falling within the jurisdiction of the said tribunals;

(e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) contain such supplemental, incidental and consequential provisions (including

---

1. Ins. by the Constitution (Seventy-fifth Amendment) Act, 1993, sec. 2 (w.e.f. 15-5-1994).
2. Sub-clauses (h) and (i) relettered as sub-clauses (i) and (j) by the Constitution (Seventy-fifth Amendment) Act, 1993, sec. 2, (w.e.f 15-5-1994).
3. Subs. by the Constitution (Seventy-fifth Amendment) Act, 1993, sec. 2, for "(g)" (w.e.f. 15-5-1994).

provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Explanation.—In this article, "appropriate Legislature", in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.]

Notes on Article 323B

Appeal to Supreme Court

Appeal lies to the Supreme Court from orders of an Administrative Tribunal by special leave under 136 on the following ground (*inter alia*) of error of law, *e.g.*, in the matter of determining the proper date of confirmation of seniority or age of retirement of the appellant, *See* the undermentioned cases:

(i) *Union of India* v. *Sharma*, AIR 1992 SC 1188, paragraphs 5 and 8.

(ii) *Union of India* v. *Partap*, AIR 1992 SC 1363, paragraphs 8, 14.

(iii) *Union of India* v. *Kamal*, AIR 1992 SC 1479.

Appeal lies to the Supreme Court from orders of an Administrative Tribunal, by special leave under Article 136, on the ground *inter alia* that finding of the Tribunal was perverse; *Tamilmani* v. *Union of India*, AIR 1992 SC 1120, paragraph 2.

All Courts

Service Tribunals have been set up under the Administrative Tribunals Act, 1985. The words 'all courts' in article 323A (2)(d) and article 323B (3)(d) include the High Court and the jurisdiction of the High Court under Articles 226-227 has been exclusively vested in the Administrative Tribunals set up under the Act; *Union of India* v. *Deep*, (1992) 4 SCC 432, paragraph 3 and 6 (3 Judges).

The State of West Bengal enacted the W.B. Taxation Tribunal Act, 1987, and set up a Tribunal with exclusive jurisdiction to adjudicate disputes or complaints or offences with respect to taxation under any of the State Acts specified therein. The Calcutta High Court has, however, struck down this Act in so far as it dealt with the case levied on the basis of the value of coal raised by mining companies, under the W.B. Primary Education Act, 1973, W.B. Rural Employment and Production Act, 1976, and the Bengal Cess Act, 1880 on the ground that the power to legislate relating to cess on coal or other minerals belonged to the Union Parliament and not the State Legislature.

The Explanation to Article 323B makes it clear that the distribution of legislative powers as between the Union and the State legislatures, in Part XI of the Constitution is not in any way to be affected by the insertion of Article 323B. Hence, a State Legislature shall be competent to set up a Tribunal under clause (a) of sub-section (2) of article 323B, only if the State Legislature has jurisdiction to legislate with respect to the assessment, collection or enforcement of the particular tax in relation to which the Tribunal is sought; *Kesoram Industries* v. *Union of India*, AIR 1993 Cal 78, paragraph 34 (DB).

Tribunals and Writs

Tribunals constituted under articles 323A and 323B of the Constitution are subject to the writ jurisdiction of the High Courts; *L. Chandra Kumar* v. *Union of India*, AIR 1997 SC 1125, paragraph 99.

PART XV
ELECTIONS

324. Superintendence, direction and control of elections to be vested in an Election Commission.—(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution[1][***] shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor[2][***] of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

Notes on Article 324

Abolition of post of Election Commissioners by the President and consequential termination of the service of the incumbent of the abolished post, cannot be made a ground of action. There is no illegality in such termination of service; *S.S. Dhanoa* v. *Union of India*, AIR 1991 SC 1745.

---

1. The words "including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States" omitted by the Constitution (Nineteenth Amendment) Act, 1966, sec. 2.
2. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

However wide the powers of the Election Commission relating to direction and control may be, its orders must be traceable to some existing law and cannot violate the provisions of any law including State Acts. But precautionary measures which can be taken without violating any statutory provision would not be illegal; *Dasappa* v. *Election Commission*, AIR 1992 Kant 230, paragraph 10.

No election can be invalidated on the ground that the Electoral Officer failed to comply with the non-statutory directions issued by the Commission even though they are administratively binding upon the Electoral Officer; *Narayan* v. *Purshottam*, (1993) 1 UJSC 297, paragraph 37.

In October, 1989 the President notified that besides the Chief Election Commissioner the Commission should have two other members called 'Election Commissioners' with co-ordinate powers. On January 1, 1990 the President revoked his Notification of 1989 as a result of which, the two Election Commissioners who had been appointed, lost their office as Election Commissioners. One of them challenged the revocation of the Notification on various grounds. The Supreme Court rejected the petition under article 324 holding as under—

(i) Even though it was desirable that the highly vital functions of the Election Commission should be exercised by more than one individual, the creation and abolition of posts was a prerogative of the Executive and article 324(2) left to the President to fix and appoint such number of Election Commissioners as he may, from time to time determine. Hence, the abolition of the post of Election Commissioners, which was a consequence of such abolition gave rise to *no* cause of action.

(ii) While it was obligatory to appoint the Chief Election Commissioner, the appointment of other Election Commissioners [clause (2)] or Regional Commissioners [clause (4)] was left by the Constitution to the discretion of the President.

(iii) In the absence of any evidence that the abolition of the posts and the removal of the incumbents thereof was made on the recommendation of the Chief Election Commissioner, it could not be held that the President or the Chief Election Officer was actuated by *malice*: *Dhanoa* v. *Union of India*, AIR 1991 SC 1745.

325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.—There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

326. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.—The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than [1][eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

327. Power of Parliament to make provision with respect to elections to Legislatures.—Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection

1. Subs. by the Constitution (Sixty-first Amendment) Act, 1988, sec. 2, for "twenty-one years".

with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

328. Power of Legislature of a State to make provision with respect to elections to such Legislature.—Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.

329. Bar to interference by courts in electoral matters.—[1][Notwithstanding anything in this Constitution [2][***]

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Notes on Article 329

Under article 323(b) election petitions are at present heard by the High Court under the Representation of the People Act, 1981, Special Election Tribunals having been abolished.

Under article 323B(3) such Tribunals can be constituted but none were constituted up to 1993. See *Nawab* v. *Vishwanath*, AIR 1993 All 104, paragraphs 9-10.

[3][**329A. Special provision as to elections to Parliament in the case of Prime Minister and Speaker.**—*[Rep. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 36 (w.e.f. 20-6-1979).]*]

PART XVI

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.—(1) Seats shall be reserved in the House of the People for—

(a) the Scheduled Castes;

[4][(b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and]

(c) the Scheduled Tribes in the autonomous districts of Assam.

---

1. Subs. by the Constitution (Thirty-ninth Amendment) Act, 1975, sec. 3, for certain words.
2. The words, figures and letter "but subject to the provisions of article 329A" omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 35 (w.e.f. 20-6-1979).
3. Ins. by the Constitution (Thirty-ninth Amendment) Act, 1975, sec. 4.
4. Subs. by the Constitution (Fifty-first Amendment) Act, 1984, sec. 2 for sub-clause (b) (w.e.f. 16-6-1986).

(2) The number of seats reserved in any State [1][or Union territory] for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State [1][or Union territory] in the House of the People as the population of the Scheduled Castes in the State [1][or Union territory] or of the Scheduled Tribes in the State [1][or Union territory] or part of the State [1][or Union territory], as the case may be, in respect of which seats are so reserved, bears to the total population of the State [1][or Union territory].

[2][(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.]

[3][*Explanation*.—In this article 332, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.]

331. Representation of the Anglo-Indian community in the House of the People.—Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the people, nominate not more than two members of that community to the House of the People.

332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.—(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, [4][except the Scheduled Tribes in the autonomous districts of Assam], in the Legislative Assembly of every State [5][***].

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved bears to the total population of the State.

[6][(3A) Notwithstanding anything contained in clause (3), until the taking effect, under article 170, of the re-adjustment, on the basis of the first census after the year 2000,

---

1. Ins. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Ins. by the Constitution (Thirty-first Amendment) Act, 1973, sec. 3.
3. Ins. by the Constitution (Fourty-second Amendment) Act, 1976, sec. 47 (w.e.f. 3-1-1977).
4. Subs. by the Constitution (Fifty-first Amendment) Act, 1984, sec. 3, for certain words (w.e.f. 16-6-1986).
5. The words and letters "specified in Part A or Part B of the First schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
6. Ins. by the Constitution (Fifty-seventh Amendment) Act, 1987, sec. 2 (w.e.f. 21-9-1987).

of the number of seats in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly of any such State shall be—

(a) if all the seats in the Legislative Assembly of such State in existence on the date of coming into force of the Constitution (Fifty-seventh Amendment) Act, 1987 (hereafter in this clause referred to as the existing Assembly) are held by members of the Scheduled Tribes, all the seats except one;

(b) in any other case, such number of seats as bears to the total number of seats, a proportion not less than the number (as on the said date) of members belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in existing Assembly.]

[1][(3B) Notwithstanding anything contained in clause (3), until the re-adjustment, under article 170, takes effect on the basis of the first census after the year 2000, of the number of seats in the Legislative Assembly of the State of Tripura, the seats which shall be reserved for the Scheduled Tribes in the legislative Assembly, shall be, such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy-second Amendment) Act, 1992, of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly.]

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district [2][***].

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district [2][***].

Notes on Article 332

Sub-section (3B) of this article shall not affect any representation in the Legislative Assembly of the State of Tripura until the dissolution of the Legislative Assembly existing at the commencement of this Act. [section 2 of Constitution (Seventy-second Amendment) Act, 1992.]

333. Representation of the Anglo-Indian community in the Legislative Assemblies of the States.—Notwithstanding anything in article 170, the Governor [3][***] of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, [4][nominate one member of that community to the Assembly].

---

1. Ins. by the Constitution (Seventy-second Amendment) Act, 1992, sec. 2 (w.e.f. 5-12-1992).
2. Certain words omitted by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71 (w.e.f. 21-1-1972).
3. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956 sec. 29 and Sch.
4. Subs. by the Constitution (Twenty-third Amendment) Act, 1969, sec. 4, for "nominate such number of members of the community to the Assembly as he considers appropriate".

334. Reservation of seats and special representation to cease after [1][sixty years].— Notwithstanding anything in the foregoing provisions of this Part, the provisions of Constitution relating to—

(a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and

(b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination,

shall cease to have effect on the expiration of a period of [1][sixty years] from the commencement of this Constitution:

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

335. Claims of Scheduled Castes and Scheduled Tribes to services and posts.— The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:

[2][Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.]

Notes on Article 335

Article 335 is to be read with article 46, which provides (as a directive principle) that the State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation; *Comptroller* v. *Jagannathan*, AIR 1987 SC 537, paragraphs 21 and 22.

In the leading case on Mandal Commission, relating to other backward classes the implications of articles 14, 15, 16, 335, *etc.*, have been examined at length. According to the majority judgment there is need to maintain a balance between reservation and efficiency and not only with reference to Scheduled Castes and Scheduled Tribes but also with reference to other backward classes. Since sacrifice of merit may have to be made for social justice; *Indra Sawhney* v. *Union of India*, (1992) Supp 3 SCC 217, paragraphs 417, 434, 836 and 859.

Whether a particular class is adequately represented in the services under the State is a matter within the subjective satisfaction of the appropriate government based on the materials in the possession of the Government and the existing conditions in the society; *Indra Sawhney* v. *Union of India*, (1992) Supp (3) SCC 217.

336. Special provision for Anglo-Indian community in certain services.—(1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August, 1947.

---

1. Subs. by the Constitution (Sixty-second Amendment) Act, 1989, sec. 2, for "forty years" (w.e.f. 20-12-1989), and again substituted by the Constitution (Seventy-ninth Amendment) Act, 1999, sec. 2 for "fifty years" (w.e.f. 25-1-2000).
2. Ins. by the Constitution (Eighty-second Amendment) Act, 2000, sec. 2 (w.e.f. 8-9-2000).

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent than the numbers so reserved during the immediately preceding period of two years:

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities.

337. Special provision with respect to educational grants for the benefit of Anglo-Indian community.—During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State [1][***] for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years:

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of annual admissions therein are made available to members of communities other than the Anglo-Indian community.

[2][**338. Special Officer for Scheduled Castes and Scheduled Tribes, *etc.*—**

[3][(1) There shall be a special officer for the Scheduled Castes and Scheduled Tribes to be known as the National Commission for the Scheduled Castes and Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

---

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Subs. by the Constitution (Sixty-fifth Amendment) Act, 1990, sec. 2 (w.e.f. 7-6-1990).
3. Subs. by the Constitution (Sixty-fifth Amendment) Act, 1990, sec. 2, for clauses (1) and (2) (w.e.f. 7-6-1990).

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by the rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may by rule determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes.]

[1][(10)] In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340 by order specify and also to the Anglo-Indian community.

339. Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes.—(1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States [2][***]. The order may define the composition, powers and

---

1. Clause (3) renumbered as clause (10) by the Constitution (Sixty-fifth Amendment) Act, 1990, sec. 2 (w.e.f. 7-6-1990).
2. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to [1][a State] as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

340. Appointment of a Commission to investigate the conditions of backward classes.—(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

341. Scheduled Castes.—(1) The President [2][may with respect to any State [3][or Union territory], and where it is a State [4][***] after consultation with the Governor [5][***] thereof], by public notification, [6]specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State [3][or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Notes on Article 341

See notes on article 342.

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. for "any such State".
2. Subs. by the Constitution (First Amendment) Act, 1951, sec. 10 for "may, after consultation with the Governor or Rajpramukh of a State".
3. Ins. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
4. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (First Amendment) Act, 1951, sec. 29 and Sch.
5. The words "or the Rajpramukh" omitted by the Constitution (First Amendment) Act, 1951, sec. 29 and Sch.
6. *See* the Constitution (Scheduled Castes) Order, 1950 (C.O. 19), the Constitution (Scheduled Castes) (Union Territories) Order, 1951, (C.O. 32), the Constitution (Jammu and Kashmir) Scheduled Castes Order 1956 (C.O. 52), the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962, (C.O. 64), the Constitution (Pondicherry) Scheduled Castes Order, 1964 (C.O. 68), the Constitution (Goa, Daman and Diu) Scheduled Castes Order, 1968 (C.O. 81) and the Constitution (Sikkim) Scheduled Castes Order, 1978 (C.O. 110).

342. Scheduled Tribes.—(1) The President [1][may with respect to any State [2][or Union territory], and where it is a State [3][***] after consultation with the Governor [4][***] thereof, by public notification, [5]specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State [2][or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Notes on Articles 341 and 342

Finality of Presidential Order

Presidential Order under article 342 regarding Scheduled Tribes is final. Court cannot add or subtract any entry. Its enquiry is confined to interpreting what an entry in the Presidential Order is intended to mean. Court cannot add to, modify or subtract from the Order. *See* the following cases on the above point:—

(i) *B. Basavalingappa* v. *D. Munichinnappa*, AIR 1965 SC 1269, 1271.

(ii) *Bhaiyalal* v. *Harikishan Singh*, AIR 1965 SC 1557: (1965) 3 SCR 877 (Scheduled Tribes).

(iii) *Dina* v. *Narayan Singh*, (1968) 38 ELR 212 (Scheduled Tribes).

(iv) *Parsram* v. *Shivchand*, AIR 1969 SC 567: (1969) 1 SCC 20 (Scheduled Castes).

(v) *Bhaiya Ram Munda* v. *Anirudh Patar*, (1971) 1 SCR 804: AIR 1971 SC 2533 (Scheduled Tribes).

(vi) *Srish Kumar* v. *State of Tripura*, AIR 1990 SC 991 (Scheduled Tribes).

(vii) *Virendra* v. *Union of India*, AIR 1992 All 147.

The entries in the Presidential Order have to be taken as final. It is not open to the court to make any addition or subtraction from the Presidential Order. Enquiry is contemplated before the Presidential Order is made but any amendment to the Presidential Order can only be by legislation. The court cannot assume jurisdiction and enter intò an enquiry to determine whether the three terms indicated in the Presidential Order, *viz.* Tripura/Tripuri/Tippera in Entry 15 includes Deshi Tripura which according to some Government Circulars includes the Laskar Community.

The Order is made after a detailed inquiry as to the economic status, the level of education and the necessity of protection, inclusion into or exclusion from the Order is made. The material

---

1. Subs. by the Constitution (First Amendment) Act, 1951, sec. 11, for "may, after consultation with the Governor or Rajpramukh of a State".
2. Ins. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
3. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (First Amendment) Act, 1951, sec. 29 and Sch.
4. The words "or the Rajpramukh" omitted by the Constitution (First Amendment) Act, 1951, sec. 29 and Sch.
5. *See* the Constitution (Scheduled Tribes Castes) Order, 1950 (C.O. 22), the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, (C.O. 33), the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959 (C.O. 58), the Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962 (C.O. 65), the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967 (C.O. 78), the Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968 (C.O. 82), The Constitution (Nagaland) Scheduled Tribes Order, 1970 (C.O. 88) and the Constitution (Sikkim) Scheduled Tribes Order, 1978 (C.O. 111).

relating to the Laskar tribe in 1930 or 1941 may not have been considered sufficient before the respective Orders were made for including the Laskars, said to have been covered by the description of Deshi Tripura. Therefore, even if historically this tribe was covered by the general description that by itself may not justify its inclusion in the Order as a Scheduled Tribe; *Srish* v. *State of Tripura*, AIR 1990 SC 991, paragraphs 15-20.

It is open to the President to declare that a caste or sub-caste shall be deemed to be a Scheduled Caste in a particular part of a State and not in any other part. It follows that a person who wants to be elected from a Scheduled Caste constituency must show that he has been registered as a Scheduled Caste in his electoral roll; the fact that his caste is recognised as a Scheduled Caste in the constituency from which he is seeking election is of no avail.

Conversely, where the President's Notification declares a caste to be a SC for the purposes of certain specified States, no Court will direct that caste, to be declared SC in relation to another State; *Virendra* v. *Union of India*, AIR 1992 All 147, paragraph 6.

Where the President's Order specifies 'Dhoba' as a Scheduled Caste in Orissa, its literal synonym 'Rajaka' would also be admitted in that S.C.; *R.O.* v. *Prafulla*, AIR 1990 SC 727, paragraph 12A.

Under a Circular of the Government of India, dated 6-8-1984, a person who is a Scheduled Tribe in a State, according to the President's Order, continues to be a Scheduled Tribe in another State to which he has migrated; *State* v. *Patel*, AIR 1992 Guj 42, paragraph 4.

In one case Scheduled Caste status was found to have been fraudulent, the State was directed to ensure that prescribed procedure for scrutiny be followed strictly, so that, unscrupulous persons do not claim the benefit; *Madhuri Patel* v. *Additional Commissioner Tribal Development*, JT (1994) 5 SC 488.

Migrants

Bhils are recognized as Scheduled Tribes in Gujarat and Maharashtra. Petitioner's father had migrated to Bombay from Gujarat in 1961. There was reservation for Scheduled Tribes in medical colleges. But the petitioner was refused the facility of reservation on the ground that Government Instruction 17(a) disallowed reservation for migrants from other States. It was held that the relevant clauses of the instruction were violative of articles 14, 15, 16, 19 and 342 of the Constitution; *Rajesh Arjunbhai Patel* v. *State of Maharashtra*, AIR 1990 Bom 114, 117, 118.

Conversion

A person who is converted to another religion cannot claim Scheduled Caste status; *Soosai* v. *Union of India*, AIR 1986 SCC 733.

PART XVII

OFFICIAL LANGUAGE

CHAPTER I — LANGUAGE OF THE UNION

343. Official language of the Union.—(1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement:

Provided that the President may, during the said period, by order[1] authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of—

(a) the English language, or

(b) the Devanagari form of numerals,

for such purposes as may be specified in the law.

344. Commission and Committee of Parliament on official language.—(1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.

(2) It shall be the duty of the Commission to make recommendations to the President as to—

(a) the progressive use of the Hindi language for the official purposes of the Union;

(b) restrictions on the use of the English language for all or any of the official purposes of the Union;

(c) the language to be used for all or any of the purposes mentioned in article 348;

(d) the form of numerals to be used for any one or more specified purposes of the Union;

(e) any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.

(3) In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services.

(4) There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (1) and to report to the President their opinion thereon.

(6) Notwithstanding anything in article 343, the President may, after consideration of the report referred to in clause (5), issue directions in accordance with the whole or any part of that report.

---

1. *See* C.O. 41.

CHAPTER II — REGIONAL LANGUAGES

345. Official language or languages of a State.—Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

346. Official language for communication between one State and another or between a State and the Union.—The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union:

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

347. Special provision relating to language spoken by a section of the population of a State.—On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III — LANGUAGE OF THE SUPREME COURT, HIGH COURTS, *ETC.*

348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, *etc.*.—(1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides—

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts—

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor [1][***] of a State, and

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

(2) Notwithstanding anything in sub-clause (a) of clause (1), the Governor [1][***] of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State:

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

---

1. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

(3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor [1][***] of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor [1][***] of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article.

349. Special procedure for enactment of certain laws relating to language.—During the period of fifteen years from the commencement of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of article 348 shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of article 344 and the report of the Committee constituted under clause (4) of that article.

CHAPTER IV — SPECIAL DIRECTIVES

350. Language to be used in representations for redress of grievances.—Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

[2][**350A. Facilities for instruction in mother-tongue at primary stage.**—It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

350B. Special Officer for linguistic minorities.—(1) There shall be a Special Officer for linguistic minorities to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.]

351. Directive for development of the Hindi language.—It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth

---

1. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Ins. by the Constitution (Seventh Amendment) Act, 1956, sec. 21.

Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

PART XVIII

EMERGENCY PROVISIONS

352. Proclamation of Emergency.—(1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or [1][armed rebellion,] he may, by Proclamation, make a declaration to that effect [2][in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation].

[3][*Explanation.*—A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.]

[4][(2) A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation.

(3) The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank under article 75) that such a Proclamation may be issued has been communicated to him in writing.

(4) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(5) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the proclamation under clause (4):

---

1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 37, for "internal Disturbance" (w.e.f. 20-6-1979).
2. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 48 (w.e.f. 3-1-1977).
3. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 37, for *Explanation* (w.e.f. 20-6-1979).
4. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 37, for clauses (2), (2A) and (3) (w.e.f. 20-6-1979).

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause.

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the proclamation has been also passed by the House of the People.

(6) For the purpose of clause (4) and (5), a resolution may be passed by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.

(7) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such Proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation.

(8) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given of, their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (1) or a Proclamation varying such Proclamation,—

(a) to the Speaker, if the House is in session; or

(b) to the President, if the House is not in session,

a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or as the case may be, by the President, for the purpose of considering such resolution.]

[1][[2][(9)] The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or [3][armed rebellion] or imminent danger of war or external aggression or [3][armed rebellion], whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation.

[4][***]

353. Effect of Proclamation of Emergency.—While a Proclamation of Emergency is in operation, then—

---

1. Ins. by the Constitution (Thirty-eighth Amendment) Act, 1975, sec. 5 (retrospectively).
2. Clause (4) re-numbered as clause (9) by the Constitution (Fourty-fourth Amendment) Act, 1978, sec. 37 (w.e.f. 20-6-1979).
3. Subs. by the Constitution (Fourty-fourth Amendment) Act, 1978, sec. 37, for "internal disturbance" (w.e.f. 20-6-1979).
4. Clause (5) omitted by the Constitution (Fourty-fourth Amendment) Act, 1978, sec. 37 (w.e.f. 20-6-1979).

(a) notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised;

(b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List;

[1][Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India,—

(i) the executive power of the Union to give directions under clause (a), and

(ii) the power of Parliament to make laws under clause (b),

shall also extend to any State other than a State in which or in any part of which the Proclamation of Emergency is in operation if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.]

354. Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation.—(1) The President may, while a Proclamation of Emergency is in operation, by order direct that all or any of the provisions of articles 268 to 279 shall for such period, not extending in any case beyond the expiration of the financial year in which such Proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit.

(2) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

355. Duty of the Union to protect States against external aggression and internal disturbance.—It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.

356. Provisions in case of failure of constitutional machinery in State.—(1) If the President, on receipt of report from the Governor [2][***] of the State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor [3][***] or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 49 (w.e.f. 3-1-1977).
2. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
3. The words "or the Rajpramukh, as the case may be" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation issued under this article except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of [1][six months from the date of issue of the Proclamation]:

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of [2][six months] from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of [2][six months] and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution

---

1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 38 , for "one year from the date of the passing of the second of the resolutions approving the Proclamation under clause (3)" (w.e.f. 20-6-1979). The words "one year" were subs. for the original words "six months" by the Constitution (Forty-second Amendment) Act, 1976, sec. 50 (w.e.f. 3-1-1977).
2. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 38 , for "one year (w.e.f. 20-6-1979). The words "one year" were subs. for the original words "six months" by the Constitution (Forty-second Amendment) Act, 1976, sec. 50 (w.e.f. 3-1-1977).

approving the continuance in force of the Proclamation has been also passed by the House of the People:

[1][Provided also that in the case of the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab, the reference in the first proviso to this clause to "three years" shall be construed as a reference to [2][five years].

[3][(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such proclamation shall not be passed by either House of Parliament unless—

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned:]

[4][Provided that in the case of the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab.]

Notes on Article 356

See notes on article 357.

357. Exercise of legislative powers under Proclamation issued under article 356.—(1) Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf;

(b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

---

1. Ins. by the Constitution (Sixth-fourth Amendment) Act, 1990, sec. 2.
2. Successively subs. by the Constitution (Sixty-seventh Amendment) Act, 1990, sec. 2 and the Constitution (Sixty-eighth Amendment) Act, 1991, sec. 2 to read as above.
3. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 38 for clause (5) (w.e.f. 20-6-1979). Clause (5) was ins. by the Constitution (Thirty-eighth Amendment) Act, 1975, sec. 6 (retrospectively).
4. Sub. by the Constitution (Fifty-ninth Amendment) Act, 1988, sec. 2 and omitted by the Constitution (Sixty-third Amendment) Act, 1989, sec. 2 (w.e.f. 6-1-1990) and again ins. by the Constitution (Sixty-fourth Amendment) Act, 1990, sec. 2 (w.e.f. 16-4-1990).

[1][(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority.]

Notes on Articles 356 and 357

Judicial review

Dr. Basu, in the Constitutional law of India (1988), pages 403, 404, has pointed out that judicial review of a proclamation under article 356 would lie on any of the grounds upon which any executive determination which is founded on subjective satisfaction can be questionable. By way of example he has cited the following grounds:—

(a) That the Proclamation has been made upon a consideration which is wholly extraneous or irrelevant to the purpose for which the power under Section 356 had been conferred by the Constitution, namely, a breakdown of the constitutional machinery in a State, or, in other words, where there is no 'reasonable nexus' between the reasons disclosed and the satisfaction of the President, because in such a case, it can be said that there has been no 'satisfaction' of the President which is a condition for exercise of the power under article 356.

(b) That the exercise of the power under article 356 has been *mala fide*, because a statutory order which lacks *bona fides* has no existence in law.

State of Rajasthan v. *Union of India*, AIR 1977 SC 1361, paragraph 124 (Chandrachud, J., paragraph 144 Bhagwati and Gupta, JJ.) (allowed in *Roy* v. *Union of India*, AIR 1982 SC 710, paragraph 27; *State of Rajasthan* v. *Union of India*, AIR 1977 SC 1361, paragraph 123 (Chandrachud, J.), 170 (Goswami, J.) 178-179 (Untwalia, J.), 203, 206, 208 (Fazl Ali, J.).

In the absence of *mala fides etc.* court cannot grant relief in law. But as a matter of propriety Minister should not be unseated without giving to the Legislative Assembly an opportunity expressing its confidence (or want of confidence) in the ministry; *Bommai* v. *Union of India*, AIR 1990 Kant 5, paragraph 33 (FB).

Mere dissolution of the Assembly on the advice of the Chief Minister does not bring the case within article 356 of the Constitution; *Arun* v. *Union of India*, AIR 1992 All 1, paragraph 7.

In *S.R. Bommai* v. *Union of India*, JT (1994) 2 SC 215 the following propositions have been laid down by the Supreme Court judgement dealing with article 356:—

(i) Presidential Proclamation dissolving a State Legislative Assembly is subject to judicial review.

(ii) Burden lies on the Government of India to prove that relevant material existed (to justify the issue of Proclamation).

(iii) Courts would not go into the correctness of the material.

(iv) If the court strikes down the proclamation it has power to restore the dismissed State Government to office.

(v) A State Government pursuing anti-secular politics is liable to action under article 356.

---

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 51 for clause (2) (w.e.f. 3-1-1977).

358. Suspension of provisions of article 19 during emergencies.—[1][(1)] [2][While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation], nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect:

[3][Provided that [4][where such Proclamation of Emergency] is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.]

[5][(2) Nothing in clause (1) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or

(b) to any executive action taken otherwise than under a law containing such a recital.]

359. Suspension of the enforcement of the rights conferred by Part III during emergencies.—(1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of [6][the rights conferred by Part III (except articles 20 and 21)] as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

[7][(1A) While an order made under clause (1) mentioning any of the rights conferred by Part III (except articles 20 and 21) is in operation, nothing in that Part conferring those rights shall restrict the power of the State as defined in the said Part to make any law or to take any executive action which the State would but for the provisions containing in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the order aforesaid ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.]

---

1. Article 358 re-numbered as clause (1) thereof by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 39 (w.e.f. 20-6-1979).
2. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 39, for "While a Proclamation of Emergency is in operation" (w.e.f. 20-6-1979).
3. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 52 (w.e.f. 3-1-1977).
4. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 39, for "where a Proclamation of Emergency" (w.e.f. 20-6-1979).
5. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 39 (w.e.f. 20-6-1979).
6. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 40, for "the rights conferred by Part III" (w.e.f. 20-6-1979).
7. Ins. by the Constitution (Thirty-eighth Amendment) Act, 1975, sec. 7 (retrospectively).

[1][Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.]

[2][(1B) Nothing in clause (1A) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or

(b) to any executive action taken otherwise than under a law containing such a recital.]

(2) An order made as aforesaid may extend to the whole or any part of the territory of India:

[2][Provided that where a Proclamation of Emergency is in operation only in a part of the territory of India, any such order shall not extend to any other part of the territory of India unless the President, being satisfied that the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation, considers such extension to be necessary.]

(3) Every order made under clause (1) shall, as soon may be after it is made, be laid before each House of Parliament.

[2][**359A. Application of this Part to the State of Punjab.**—*[Rep. by the Constitution (Sixty-third Amendment) Act, 1989, sec. 3 (w.e.f. 6-1-1990).]*]

360. Provisions as to financial emergency.—(1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.

[3][(2) A Proclamation issued under clause (1)—

(a) may be revoked or varied by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 53 (w.e.f. 3-1-1977).
2. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 40 (w.e.f. 20-6-1979).
3. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 41, for clause (2) (w.e.f. 20-6-1979).

reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in this Constitution—

(a) any such direction may include—

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all Money Bills or other Bills to which the provisions of article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

(b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

[1][***]

PART XIX

MISCELLANEOUS

361. Protection of President and Governors and Rajpramukhs.—(1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties :

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor [2][***] of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall be issued from any court during his term of office.

---

1. Clause (5) was ins. by the Constitution (Thirty-eighth Amendment) Act, 1975, sec. 8 (retrospectively) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 41 (w.e.f. 20-6-1979).
2. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956 sec. 29 and Sch.

(4) No civil proceedings in which relief is claimed against the President, or the Governor [1][***] of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor [1][***] of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor [2][***], as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

[3][**361A. Protection of publication of proceedings of Parliament and State Legislature**.—(1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature of a State, unless the publication is proved to have been made with malice:

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast, by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

Explanation.—In this article, "newspaper" includes a news agency report containing material for publication in a newspaper.]

362. Rights and privileges of Rulers of Indian States.—*[Rep. by the Constitution (Twenty-sixth Amendment) Act, 1971, sec. 2.]*

363. Bar to interference by courts in disputes arising out of certain treaties, agreements, *etc.*—(1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* o other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument.

(2) In this article—

(a) "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

---

1. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956 sec. 29 and Sch.
2. The words "or the Rajpramukh" omitted by sec. 29 and Sch., *ibid.*
3. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 42 (w.e.f. 20-6-1979).

(b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

[1][**363A. Recognition granted to Rulers of Indian States to cease and privy purses to be abolished**.—Notwithstanding anything in this Constitution or in any law for the time being in force—

(a) the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler;

(b) on and from the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, privy purse is abolished and all rights, liabilities and obligations in respect of privy purse are extinguished and accordingly the Ruler or, as the case may be, the successor of such Ruler, referred to in clause (a) or any other person shall not be paid any sum as privy purse.]

364. Special provisions as to major ports and aerodromes.—(1) Notwithstanding anything in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification—

(a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or

(b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article—

(a) "major port" means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port;

(b) "aerodrome" means aerodrome as defined for the purposes of the enactment's relating to airways, aircraft and air navigation.

365. Effect of failure to comply with, or to give effect to, directions given by the Union.—Where any State has failed to comply with or to give effect to any directions given in the exercise of the executive power of the Union under any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.

366. Definitions.—In this Constitution, unless the context otherwise requires, the following expressions have, the meanings hereby respectively assigned to them, that is to say—

---

1. Ins. by the Constitution (Twenty-sixth Amendment) Act, 1971, sec. 3.

(1) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;

(2) "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only;

(3) "article" means an article of this Constitution;

(4) "borrow" includes the raising of money by the grant of annuities, and "loan" shall be construed accordingly;

[1][***]

(5) "clause" means a clause of the article in which the expression occurs;

(6) "corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled:—

(a) that it is not chargeable in respect of agricultural income;

(b) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;

(c) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals;

(7) "corresponding Province", "corresponding Indian State" or "corresponding State" means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;

(8) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuity and any liability under any guarantee, and "debt charges" shall be construed accordingly;

(9) "estate duty" means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass;

(10) "existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation;

(11) "Federal Court" means the Federal Court constituted under the Government of India Act, 1935;

(12) "goods" includes all materials, commodities, and articles;

---

1. Clause (4A) was ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 54 (w.e.f. 1-2-1977) and omitted by the Constitution (Forty-third Amendment) Act, 1977, sec. 11 (w.e.f. 13-4-1978).

(13) "guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount;

(14) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—

(a) any Court in the territory of India constituted or reconstituted under this Constitution as a High Court, and

(b) any other Court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution;

(15) "Indian State" means any territory which the Government of the Dominion of India recognised as such a State;

(16) "Part" means a part of this Constitution;

(17) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;

(18) "Proclamation of Emergency" means a Proclamation issued under clause (1) of article 352;

(19) "public notification" means a notification in the Gazette of India, or, as the case may be, the Official Gazette of a State;

(20) "railway" does not include—

(a) a tramway wholly within a municipal area, or

(b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway;

[1][***]

[2][(22) "Ruler" means the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler;

(23) "Schedule" means a Schedule to this Constitution;

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;

(25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution;

(26) "securities" includes stock;

[3][***]

---

1. Clause (21) omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Subs. by the Constitution (Twenty-sixth Amendment) Act, 1971, sec. 4, for clause (22).
3. Clause (26A) ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 54 (w.e.f. 1-2-1977) and omitted by the Constitution (Forty-third Amendment) Act, 1977, sec. 11 (w.e.f. 13-4-1978)

(27) "sub-clause" means a sub-clause of the clause in which the expression occurs;

(28) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly;

(29) "tax on income" includes a tax in the nature of an excess profits tax;

[1][(29A) "tax on the sale or purchase of goods" includes—

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;]

[2][(30) "Union territory" means any Union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule.]

Notes on Article 366

Clause (10): 'existing law'

A grant made by a Ruler as a gift on the occasion of his daughter's marriage is an 'executive' act and is not an existing law within article 366(10); *Tej Singh* v. *State of Maharashtra*, (1992) Supp 2 SCC 554, paragraphs 6-8.

Clause (17)

See *Jarnail* v. *Secretary*, (1993) 1 SCC 47, paragraph 9.

Clause (29A)

Article 366 (29)(A) explains the ambit of the expression "sale or purchase of goods" as occurring in article 286 (and in List II, Entry 56) and amplifies it by fiction but in other respects subject to the same restrictions as attach to the provisions referred to above; *Gannon Dunkerly* v. *State of Rajasthan*, (1993) 1 SCC 364, paragraphs 15-16, 25 and 31 (5 Judges). As to works contract, *etc.*; See *Builders Association* v. *State of Kerala*, AIR 1993 SC 991.

---

1. Ins. by the Constitution (Forty-sixth Amendment) Act, 1982, sec. 4.
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for clause (30).

367. Interpretation.—(1) Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

(2) Any reference in this Constitution to Acts or laws of, or made by, Parliament, or to Acts or laws of, or made by, the Legislature of a State [1][***], shall be construed as including a reference to an Ordinance made by the President or, to an Ordinance made by a Governor [2][***], as the case may be.

(3) For the purposes of this Constitution "foreign State" means any State other than India:

Provided that, subject to the provisions of any law made by Parliament, the President may by order[3] declare any State not to be a foreign State for such purposes as may be specified in the order.

PART XX

AMENDMENT OF THE CONSTITUTION

368. [4][Power of Parliament to amend the Constitution and procedure therefor].—[5][(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.]

[6][(2)] An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, [7][it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

(a) article 54, article 55, article 73, article 162 or article 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

---

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
3. *See* the Constitution (Declaration as to foreign States) Order, 1950 (C.O. 2).
4. Subs. by the Constitution (Twenty-fourth Amendment) Act, 1971, sec. 3, for "Procedure for amendment of the Constitution".
5. Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, sec. 3.
6. Article 368 renumbered as clause (2) thereof by the Constitution (Twenty-fourth Amendment) Act, 1971, sec. 3.
7. Subs. by the Constitution (Twenty-fourth Amendment) Act, 1971, sec. 3, for "it shall be presented to the President for his assent and upon such assent being given to the Bill".

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States [1][***] by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

[2][(3) Nothing in article 13 shall apply to any amendment made under this article.]

[3][(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.]

Notes on Article 368

Clauses (4) and (5) of article 368 are *ultra vires* because they exclude judicial review which is a basic feature of the Constitution; *Minerva Mills Ltd.* v. *Union of India*, AIR 1980 SC 1789: (1980) 2 SCC 591. Compare—

(i) *Indira Gandhi* v. *Raj Narain*, AIR 1975 SC 2299.

(ii) *Keshavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461.

(iii) *Sampath* v. *Union of India*, AIR 1987 SC 386.

(iv) *Waman Rao* v. *Union of India*, AIR 1981 SC 271.

(v) *Bhim Singhji* v. *Union of India*, AIR 1981 SC 234.

The power under this article is a constituent power not subject to the constitutional scheme as to distribution of legislative power according to entries in the Seventh Schedule; *Sasanka* v. *Union of India*, AIR 1981 SC 522.

Basic features

Some judgments deal with the following as basic features:—

(i) Elections free and fair; *Kihota Hollohon* v. *Zachilhu*, AIR 1993 SC 412, paragraphs 18, 46 and 104.

(ii) The principle of equality, not every feature of equality, but (the quintessence of equal justice); *Raghunathrao* v. *Union of India*, AIR 1993 SC 1267, paragraphs 96, 176, 185 and 186 (CB).

(iii) Judicial review; *Subhash* v. *Union of India*, AIR 1991 SC 631, paragraph 44 (3 Judges); *Shri Kumar* v. *Union of India*, (1992) 2 SCC 428, paragraph 37.

(iv) Rule of law; *Indira* v. *Union of India*, (1992) Supp (3) SCC 217, paragraph 339.

(v) Sovereign, democratic, republican structure; *Kihota Hollohon* v. *Zachilhu*, AIR 1993 SC 412, paragraphs 18, 46 and 104.

(vi) Powers of the Supreme Court under articles 32, 136, 141, 142; *Delhi J.S.A.* v. *State of Gujarat*, AIR 1991 SC 2176, paragraph 37 (3 Judges).

According to proviso (b) to sub-section (2) an amendment of the Constitution which takes away the powers of the Supreme Court (say, under article 136) or of a High Court (say, under article 226) shall be void unless it is ratified by the legislatures of not less than 1/2 of the States before being presented to the President for his assent.

1. The words and letters "specified in Parts A and B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, sec. 3.
3. Clauses (4) and (5) ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 55.

The object of this proviso is to give effect to the *federal* principle.

The word 'change' at the beginning of the proviso means a change in the remedy while the right remains intact. But such change may not be a direct change in the language of any of the provisions specified in clauses (a) to (e) of the proviso, but may be a change 'in effect'.

An instance of a Constitution Amendment 'in effect' changing articles 136, 226, 227 is to be found in the judgment of the Constitution Bench where the validity of paragraph 7 inserted into Sch. X of the Constitution, by the Constitution (Fifty-second Amendment) Act, 1985 was challenged; *Kihota* v. *Zachilhu*, (1992) Supp 2 SCC 651, paragraphs 61-62.

PART XXI

[1][TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS]

369. Temporary power to Parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List.— Notwithstanding anything in this Constitution, Parliament shall, during a period of five years from the commencement of this Constitution, have power to make laws with respect to the following matters as if they were enumerated in the Concurrent List, namely:—

(a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or kapas), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), cattle fodder (including oil-cakes and other concentrates), coal (including coke and derivatives of coal), iron, steel and mica;

(b) offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court;

but any law made by Parliament, which Parliament would not but for the provisions of this article have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of the said period, except as respects things done or omitted to be done before the expiration thereof.

[2][370. Temporary provisions with respect to the State of Jammu and Kashmir.— (1) Notwithstanding anything in this Constitution,—

---

1. Subs. by the Constitution (Thirteenth Amendment) Act, 1962, sec. 2, for "TEMPORARY AND TRANSITIONAL PROVISIONS" (w.e.f. 1-12-1963).
2. In exercise of the powers, conferred by this article the President, on the recommendation of the Constituent Assembly of the State of Jammu and Kashmir, declared that, as from the 17th day of November, 1952, the said article 370 shall be operative with the modification that for the *Explanation* in clause (1) thereof, the following *Explanation* is substituted namely:—
"*Explanation*—For the purposes of this article, the Government of the State means the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the "Sadar-i-Rayasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office."
* Now "Governor" (Ministry of Law Order No. C.O. 44, dated the 15th November, 1952).

(a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order[1] specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

---

1. *See* the Constitution (Application to Jammu and Kashmir) Order, 1954, (C.O. 48), as amended from time to time in Appendix I.

[1][371. Special provision with respect to the States of [2][***] Maharashtra and Gujarat.—[3][***]

(2) Notwithstanding anything in this Constitution, the President may by order made with respect to [4][the State of Maharashtra or Gujarat], provide for any special responsibility of the Governor for—

(a) the establishment of separate development boards for Vidarbha, Marathwada, [5][and the rest of Maharashtra or, as the case may be,] Saurashtra, Kutch and the Gujarat with the provision that a report on the working of each of rest of these boards will be placed each year before the State Legislative Assembly;

(b) the equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole; and

(c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in service under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole.

[6][371A. Special provision with respect to the State of Nagaland.—(1) Notwithstanding anything in this Constitution,—

(a) no Act of Parliament in respect of—

(i) religious or social practices of the Nagas,

(ii) Naga customary law and procedure,

(iii) administration of civil and criminal justice involving decisions according to Naga customary law,

(iv) ownership and transfer of land and its resources,

shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides;

(b) the Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills-Tuensang Area immediately before the formation of that State continue therein or in any part thereof and in the discharge of his functions in relation thereto the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken:

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this sub-clause required to act in the

---

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 22, for article 371
2. The words "Andhra Pradesh," omitted by the Constitution (Thirty-second Amendment) Act, 1973, sec. 2 (w.e.f. 1-7-1974).
3. Clause (1) omitted by the Constitution (Thirty-second Amendment) Act, 1973, sec. 2 (w.e.f. 1-7-1974).
4. Subs. by the Bombay Reorganisation Act, 1960 (11 of 1960), sec. 85, for "the State of Bombay" (w.e.f. 1-5-1960).
5. Subs. by the Bombay Reorganisation Act, 1960 (11 of 1960), sec. 85, for "the rest of Maharashtra" (w.e.f. 1-5-1960).
6. Ins. by the Constitution (Thirteenth Amendment) Act, 1962, sec. 2 (w.e.f. 1-12-1963).

exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment:

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Nagaland, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order;

(c) in making his recommendation with respect to any demand for a grant, the Governor of Nagaland shall ensure that any money provided by the Government of India out of the Consolidated Fund of India for any specific service or purpose is included in the demand for a grant relating to that service or purpose and not in any other demand;

(d) as from such date as the Governor of Nagaland may by public notification in this behalf specify, there shall be estalished a regional council for the Tuensang district consisting of thirty-five members and the Governor shall in his discretion make rules providing for—

(i) the composition of the regional council and the manner in which the members of the regional council shall be chosen:

Provided that the Deputy Commissioner of the Tuensang district shall be the Chairman *ex officio* of the regional council and the Vice-Chairman of the regional council shall be elected by the members thereof from amongst themselves;

(ii) the qualifications for being chosen as, and for being, members of the regional council;

(iii) the term of office of, and the salaries and allowances, if any, to be paid to members of, the regional council;

(iv) the procedure and conduct of business of the regional council;

(v) the appointment of officers and staff of the regional council and their conditions of services; and

(vi) any other matter in respect of which it is necessary to make rules for the constitution and proper functioning of the regional council.

(2) Notwithstanding anything in this Constitution, for a period of ten years from the date of the formation of the State of Nagaland or for such further period as the Governor may, on the recommendation of the regional council, by public notification specify in this behalf,—

(a) the administration of the Tuensang district shall be carried on by the Governor;

(b) where any money is provided by the Government of India to the Government of Nagaland to meet the requirements of the State of Nagaland as a whole, the Governor shall in his discretion arrange for an equitable allocation of that money between the Tuensang district and the rest of the State;

(c) no Act of the Legislature of Nagaland shall apply to the Tuensang district unless the Governor, on the recommendation of the regional council, by public

notification so directs and the Governor in giving such direction with respect to any such Act may direct that the Act shall in its application to the Tuensang district or any part thereof have effect subject to such exceptions or modifications as the Governor may specify on the recommendation of the regional council:

Provided that any direction given under this sub-clause may be given so as to have retrospective effect;

(d) the Governor may make, regulations for the peace, progress and good government of the Tuensang district and any regulations so made may repeal or amend with retrospective effect, if necessary, any Act of Parliament or any other law which is for the time being applicable to that district;

(e) (i) one of the members representing the Tuensang district in the Legislative Assembly of Nagaland shall be appointed Minister for Tuensang affairs by the Governor on the advice of the Chief Minister and the Chief Minister in tendering his advice shall act on the recommendation of the majority of the members as aforesaid;[1]

(ii) the Minister for Tuensang affairs shall deal with, and have direct access to the Governor on, all matters relating to the Tuensang district but he shall keep the Chief Minister informed about the same;

(f) notwithstanding anything in the foregoing provisions of this clause, the final decision on all matters relating to the Tuensang district shall be made by the Governor in his discretion;

(g) in articles 54 and 55 and clause (4) of article 80, references to the elected members of the Legislative Assembly of a State or to each such member shall include references to the members or member of the Legislative Assembly of Nagaland elected by the regional council established under this article;

(h) in article 170—

(i) clause (1) shall, in relation to the Legislative Assembly of Nagaland, have effect as if for the word "sixty", the words "forty-six" had been substituted;

(ii) in the said clause, the reference to direct election from territorial constituencies in the State shall include election by the members of the regional council established under this article;

(iii) in clauses (2) and (3), references to territorial constituencies shall mean references to territorial constituencies in the Kohima and Mokokchung districts.

(3) If any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may by order do anything (including any adaptation or modification

---

1. Paragraph 2 of the Constitution (Removal of Difficulties) Order, No. X provides (w.e.f. 1-12-1963) that article 371A of the Constitution of India shall have effect as if the following proviso were added to paragraph (i) of sub-clause (e) of clause (2) thereof, namely:—
"Provided that the Governor may, on the advice of the Chief Minister, appoint any person as Minister for Tuensang affairs to act as such until such time as persons are chosen in accordance with law to fill the seats allocated to the Tuensang district in the Legislative Assembly of Nagaland".

of any other article) which appears to him to be necessary for the purpose of removing that difficulty:

Provided that no such order shall be made after the expiration of three years from the date of the formation of the State of Nagaland.

Explanation.—In this article, the Kohima, Mokokchung and Tuensang districts shall have the same meanings as in the State of Nagaland Act, 1962.

Notes on Article 371A

The Limitation Act, 1963 does not involve customary law. Hence it can apply to Nagaland; *Temjenkaba* v. *Temjenwali*, AIR 1992 Gau 8.

[1][**371B. Special provision with respect to the State of Assam**.—Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Assam, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the tribal areas specified in [2][Part I] of the table appended to paragraph 20 of the Sixth Schedule and such number of other members of that Assembly as may be specified in the order and for the modifications to be made in the rules of procedure of that Assembly for the constitution and proper functioning of such committee.]

[3][**371C. Special provision with respect to the State of Manipur**.—(1) Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Manipur, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the Hill Areas of that State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of such committee.

(2) The Governor shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Hill Areas in the State of Manipur and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

Explanation.—In this article, the expression "Hill Areas" means such areas as the President may, by order, declare to be Hill Areas.

[4][**371D. Special provisions with respect to the State of Andhra Pradesh**.—(1) The President may, by order made with respect to the State of Andhra Pradesh, provide, having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the State.

(2) An order made under clause (1) may, in particular,—

---

1. Ins. by the Constitution (Twenty-second Amendment) Act, 1969, sec. 4.
2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71, for "Part A" (w.e.f. 21-1-1972).
3. Ins. by the Constitution (Twenty-seventh Amendment) Act, 1971, sec. 5 (w.e.f. 15-2-1972).
4. Ins. by the Constitution (Thirty-second Amendment) Act, 1973, sec. 3 (w.e.f. 1-7-1974).

(a) require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under the State into different local cadres for different parts of the State and allot in accordance with such principal and procedure as may be specified in the order the persons holding such post to the local cadres so organised;

(b) specify any part or parts of the State which shall be regarded as the local area—

(i) for direct recruitment to posts in any local cadre (whether organised in pursuance of an order under this article or constituted otherwise) under the State Government;

(ii) for direct recruitment to posts in any cadre under any local authority within the State; and

(iii) for the purposes of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;

(c) specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made—

(i) in the matter of direct recruitment to posts in any such cadre referred to in sub-clause (b) as may be specified in this behalf in the order;

(ii) in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order,

to or in favour of candidates who have resided or studied for any period specified in the order in the local area in respect of such cadre, University or other educational institution, as the case may be.

(3) The President may, by order, provide for the constitution of an Administrative Tribunal for the State of Andhra Pradesh to exercise such jurisdiction, powers and authority including any jurisdiction, power and authority which immediately before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, was exercisable by any court (other than the Supreme Court) or by any tribunal or other authority as may be specified in the order with respect to the following matters, namely:—

(a) appointment, allotment or promotion to such class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order;

(b) seniority of persons appointed, allotted or promoted to such class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order;

(c) such other conditions of service of persons appointed, allotted or promoted to such class or classes of civil posts in any civil service of the State, or to such class or classes of civil posts under the State or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order.

(4) An order made under clause (3) may—

(a) authorise the Administrative Tribunal to receive representations for the redress of grievances relating to any matter within its jurisdiction as the President may specify in the order and to make such orders thereon as the Administrative Tribunal deems fit;

(b) contain such provisions with respect to the powers and authorities and procedure of the Administrative Tribunal (including provisions with respect to the powers of the Administrative Tribunal to punish for contempt of itself) as the President may deem necessary;

(c) provide for the transfer of the Administrative Tribunal of such classes of proceedings, being proceedings relating to matters within its jurisdiction and pending before any court (other than the Supreme Court) or tribunal or other authority immediately before the commencement of such order, as may be specified in the order;

(d) contain such supplemental, incidental and consequential provisions (including provisions as to fees and as to limitation, evidence or for the application of any law for the time being in force subject to any exceptions or modifications) as the President may deem necessary.

(5) The order of the Administrative Tribunal finally disposing of any case shall become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order is made, whichever is earlier:

Provided that the State Government may, by special order made in writing and for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it becomes effective and in such a case, the order of the Administrative Tribunal shall have effect only in such modified form or be of no effect, as the case may be.

(6) Every special order made by the State Government under the proviso to clause (5) shall be laid, as soon as may be after it is made, before both Houses of the State Legislature.

(7) The High Court for the State shall not have any powers of superintendence over the Administrative Tribunal and no court (other than the Supreme Court) or tribunal shall exercise any jurisdiction, power or authority in respect of any matter subject to the jurisdiction, power or authority of, or in relation to, the Administrative Tribunal.

(8) If the President is satisfied that the continued existence of the Administrative Tribunal is not necessary, the President may by order abolish the Administrative Tribunal and make such provisions in such order as he may deem fit for the transfer and disposal of cases pending before the Tribunal immediately before such abolition.

(9) Notwithstanding any judgment, decree or order of any court, tribunal or other authority,—

(a) no appointment, posting, promotion or transfer of any person—

(i) made before the 1st day of November, 1956, to any post under the Government of, or any local authority within, the State of Hyderabad as it existed before that date; or

(ii) made before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, to any post under the Government of, or any local or other authority within, the State of Andhra Pradesh; and

(b) no action taken or thing done by or before any person referred to in sub-clause (a), shall be deemed to be illegal or void or ever to have become illegal or void merely on the ground that the appointment, posting, promotion or transfer of such person was not made in accordance with any law, then in force, providing for any requirement as to residence within the State of Hyderabad or, as the case may be, within any part of the State of Andhra Pradesh, in respect of such appointment, posting, promotion or transfer.

(10) The provisions of this article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.]

Notes on Article 371D

In article 371D(1) the expression 'public employment' includes direct recruitment as well as promotion. Article 371D(2) does not restrict the scope of article 371D(1) but particularises it in relation to direct recruitment. It is complementary to clause (1); *Government of Andhra Pradesh* v. *Suryanarayana*, AIR 1991 SC 2113, paragraph 7.

A.P. Panchayati Raj Engineering Service Rules, 1963, rule 2A, (introduced in 1979) has to be given retrospective effect, so that promotions abroad do not have to be required as provisional and as subject to review and readjustment; *Government of Andhra Pradesh* v. *Suryanarayana*, AIR 1991 SC 2113, paragraph 7.

Once the President makes an order under article 371D(1) and (2) the State Government loses its inherent power to deal with matters relating to services, it may exercise its powers on matters dealt within the Presidential order only in the manner specified in the order; *Prakasha* v. *C.C.T.*, (1990) 2 SCC 259 (3 Judges).

Appeal by special leave lies to the Supreme Court from orders of the Andhra Pradesh Administrative Tribunal, *inter alia*—

(i) where the order of the Tribunal is without jurisdiction; *A.P.S.E.B.* v. *Hai*, AIR 1992 SC 1542, paragraph 7.

(ii) where the order of the Tribunal is without jurisdiction; *A.P.S.E.B.* v. *Azami*, (1992) Supp 1 SCC 660, paragraphs 5-7.

[1][**371E. Establishment of Central University in Andhra Pradesh.**—Parliament may by law provide for the establishment of a University in the State of Andhra Pradesh.]

[2][**371F. Special provisions with respect to the State of Sikkim.**—Notwithstanding anything in this Constitution,—

(a) the Legislative Assembly of the State of Sikkim shall consist of not less than thirty members;

(b) as from the date of commencement of the Constitution (Thirty-sixth Amendment) Act, 1975 (hereafter in this article referred to as the appointed day)—

(i) the Assembly for Sikkim formed as a result of the elections held in Sikkim in April, 1974 with thirty-two members elected in the said elections) hereinafter referred to as the sitting members) shall be deemed to be the Legislative Assembly of the State of Sikkim duly constituted under this Constitution;

---

1. Ins. by the Constitution (Thirty-second Amendment) Act, 1973, sec. 3 (w.e.f. 1-7-1974).
2. Ins. by the Constitution (Thirty-sixth Amendment) Act, 1975, sec. 3 (w.e.f. 26-4-1975).

(ii) the sitting members shall be deemed to be the members of the Legislative Assembly of the State of Sikkim duly elected under this Constitution; and

(iii) the said Legislative Assembly of the State of Sikkim shall exercise the powers and perform the functions of the Legislative Assembly of a State under this Constitution;

(c) in the case of the Assembly deemed to be the Legislative Assembly of the State of Sikkim under clause (b), the references to the period of [1][five years] in clause (1) of article 172 shall be construed as references to a period of [2][four years] and the said period of [2][four years] shall be deemed to commence from the appointed day;

(d) until other provisions are made by Parliament by law, there shall be allotted to the State of Sikkim one seat in the House of People and the State of Sikkim shall form one Parliamentary (constituency to be called the Parliamentary constituency for Sikkim;

(e) the representative of the State of Sikkim in the House of the people in existence on the appointed day shall be elected by the members of the Legislative Assembly of the State of Sikkim;

(f) Parliament may, for the purpose of protecting the rights and interests of the different sections of the population of Sikkim make provision for the number of seats in the Legislative Assembly of the State of Sikkim which may be filled by candidates belonging to such sections and for the delimitation of the Assembly constituencies from which candidates belonging to such sections alone may stand for election to the Legislative Assembly of the State of Sikkim;

(g) the Governor of Sikkim shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim and in the discharge of his special responsibility under this clause, the Governor of Sikkim shall, subject to such directions as the President may, from time to time, deem fit to issue, act in his direction;

(h) all property and assets (whether within or outside the territories comprised in the State of Sikkim) which immediately before the appointed day were vested in the Government of Sikkim or in any other authority or in any person for the purposes of the Government of Sikkim shall, as from the appointed day, vest in the Government of the State of Sikkim;

(i) the High Court functioning as such immediately before the appointed day in the territories comprised in the State of Sikkim shall, on and from the appointed day, be deemed to be the High Court for the State of Sikkim;

---

1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 43, for "six years" (w.e.f. 6-9-1979). The words "six years" were substituted for the original words "five years" by the Constitution (Forty-second Amendment) Act, 1976, sec. 56 (w.e.f. 3-1-1977).
2. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 43, for "five years" (w.e.f. 6-9-1979). The words "five years" were substituted for the original words "four years" by the Constitution (Forty-second Amendment) Act, 1976, sec. 56 (w.e.f. 3-1-1977).

(j) all courts of civic, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of the State of Sikkim shall continue on and from the appointed day to exercise their respective functions subject to the provision of this Constitution;

(k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority;

(l) for the purpose of facilitating the application of any such law as is referred to in clause (k) in relation to the administration of the State of Sikkim and for the purpose of bringing the provisions of any such law into accord with the provisions of this Constitution, the President may, within two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon, every such law shall have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law;

(m) neither the Supreme Court nor any other court shall have jurisdiction in respect of any dispute or other matter arising out of any treaty, agreement, engagement or other similar instrument relating to Sikkim which was entered into or executed before the appointed day and to which the Government of India or any of its predecessor Governments was a party, but nothing in this clause shall be construed to derogate from the provisions of article 143;

(n) the president may, by public notification, extend with such restrictions or modifications as he thinks fit to the State of Sikkim any enactment which is in force in a State in India at the date of the notification;

(o) if any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may, by order[1], do anything (including any adaptation or modification of any other article) which appears to him to be necessary for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of two years from the appointed day;

(p) all things done and all actions taken in or in relation to the State of Sikkim or the territories comprised therein during the period commencing on the appointed day and ending immediately before the date on which the Constitution (Thirty-sixth Amendment) Act, 1975, received the assent of the President shall, in so far as they are in conformity with the provisions of this Constitution as amended by the Constitution (Thirty-sixth Amendment) Act, 1975, be deemed for all purposes to have been validly done or taken under this Constitution as so amended.]

[2][**371G. Special provision with respect to the State of Mizoram.**—Notwithstanding in this Constitution,—

1. *See* the Constitution (Removal of Difficulties) Order XI (C.O. 99).

2. Ins. by the Constitution (Fifty-third Amendment) Act, 1986, sec. 2 (w.e.f. 20-2-1987).

(a) no Act of Parliament in respect of—

(i) religious or social practices of the Mizos,

(ii) Mizoram customary law and procedure,

(iii) administration of civil and criminal justice involving decisions according to Mizoram customary law,

(iv) ownership and transfer of land,

shall apply to the State of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides:

Provided that nothing in this clause shall apply to any Central Act in force in the Union Territory of Mizoram immediately before the commencement of the Constitution (Fifty-third Amendment) Act, 1986;

(b) the Legislative Assembly of the State of Mizoram shall consist of not less than forty members.]

[1][**371H. Special provision with respect to the State of Arunachal Pradesh.**—Notwithstanding anything in this Constitution—

(a) the Governor of Arunachal Pradesh shall have special responsibility with respect to law and order in the State of Arunachal Pradesh and in the discharge of his functions in relation thereto, the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken:

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment:

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Arunachal Pradesh, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order;

(b) the Legislative Assembly of the State of Arunachal Pradesh shall consist of not less than thirty members.]

[2][**371-I. Special provision with respect to the State of Goa.**—Notwithstanding anything in this Constitution, the Legislative Assembly of the State of Goa shall consist of not less than thirty members.]

372. Continuance in force of existing laws and their adaptation.—(1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall

---

1. Ins. by the Constitution (Fifty-fifth Amendment) Act, 1986, sec. 2 (w.e.f. 20-2-1987).
2. Ins. by the Constitution (Fifth-fifth Amendment) Act, 1986, sec. 2 (w.e.f. 30-5-1987).

continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order[1] make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) shall be deemed—

(a) to empower the President to make any adaptation or modification of any law after the expiration of [2][three years] from the commencement of this Constitutions; or

(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

Explanation I.—The expression 'law in force' in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Explanation II.—Any law passed or made by a Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have such extra-territorial effect.

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force.

Explanation IV.—An Ordinance promulgated by the Governor of a Province under section 88 of the Government of India Act, 1935, and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period.

---

1. *See* the Adaptation of Laws Order, 1950, dated 26th January, 1950, Gazette of India, Extra., p. 449 as amended by Notification S.R.O. 115, dated the 5th June, 1950, Gazette of India, Extra., Part II, Sec. 3, p. 51, Notification S.R.O. 870, dated the 4th November, 1950, Gazette of India, Extra., Pt. II, Sec. 3, p. 903, Notification S.R.O. 508, dated the 4th April, 1951, Gazette of India, Extra., Pt. II, Sec. 3, p. 287 Notification S.R.O. 1140 B, dated 2nd July, 1952, Gazette of India, Extra., Pt. II, Sec. 3, p. 661/I; and the Adaptation of the Travancore-Cochin Land Acquisition Laws Order, 1952, dated the 20th November, 1952, Gazette of India, Extra., Pt. II, Sec. 3, p. 923.

2. Subs. by the Constitution (First Amendment) Act, 1951, sec. 12, for "two years".

Notes of Article 372

Article 372(1)

The expression "All the law in force" includes not only the enactments of the Indian Legislative but also the common law of the land which was being administered by the courts in India. This includes not only the personal law, *viz.*. the Hindu and Mohammedan laws, but also the rules of the English Common law, *e.g.*, the law of torts as well as customary laws, the rules of interpretation of statutes; *In re Amina*, AIR 1992 Bom 214.

There is no bar to an executive act or a grant or a contract made by such Ruler (the absolute Ruler of an Indian State) being modified by an executive act of the appropriate successor Government, *e.g.*, where the Ruler purported to act under certain administrative Rules framed by himself and not in the exercise of sovereign power; *Tej Singh* v. *State of Maharashtra*, (1992) Supp 2 SCC 554, paragraphs 6 and 8.

[1][**372A. Power of the President to adapt laws.**—(1) For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this Constitution as amended by that Act, the President may by order[2] made before the first day of November, 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(2) Nothing in clause (1) shall be deemed to prevent a competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.]

373. Power of President to make order in respect of persons under preventive detention in certain cases.—Until provision is made by Parliament under clause (7) of article 22, or until the expiration of one year from the commencement of this Constitution, whichever is earlier, the said article shall have effect as if for any reference to Parliament in clauses (4) and (7) thereof there were substituted a reference to the President and for any reference to any law made by Parliament in those clauses there were substituted a reference to an order made by the President.

374. Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before His Majesty in Council.—(1) The Judges of the Federal Court holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the Supreme Court and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 125 in respect of the Judges of the Supreme Court.

(2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same, and the judgments and orders of the Federal Court delivered or made before the

---

1. Ins. by the Constitution (Seventh Amendment) Act, 1956, sec. 23.
2. *See* the Adaptation of Laws Orders of 1956 and 1957.

commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court.

(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such Court by this Constitution.

(4) On and from the commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State specified in Part B of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority at such commencement shall be transferred to, and disposed of by, the Supreme Court.

(5) Further provision may be made by Parliament by law to give effect to the provisions of this article.

375. Courts, authorities and officers to continue to function subject to the provisions of the Constitution.—All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial executive and ministerial, throughout the territory of India, shall continue to exercise their respective functions subject to the provisions of this Constitution.

376. Provisions as to Judges of High Courts.—(1) Notwithstanding anything in clause (2) of article 217, the Judges of High Court in any Province holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 221 in respect of the Judges of such High Court. [1][Any such Judge shall, notwithstanding that he is not a citizen of India, be eligible for appointment as Chief Justice of such High Court, or as Chief Justice or other Judge of any other High Court.]

(2) The Judges of a High Court in any Indian State corresponding to any State specified in Part B of the First Schedule holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the State so specified and shall, notwithstanding anything in clauses (1) and (2) of article 217 but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article, the expression 'Judge' does not include an acting Judge or an additional Judge.

377. Provisions as to Comptroller and Auditor-General of India.—The Auditor-General of India holding office immediately before the commencement of this

1. Added by the Constitution (First Amendment) Act, 1951, sec. 13.

Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) or article 148 in respect of the Comptroller and Auditor-General of India and be entitled to continue to hold office until the expiration of his term of office as determined under the provisions which were applicable to him immediately before such commencement.

378. Provisions as to Public Service Commissions.—(1) The members of the Public Service Commission for the Dominion of India holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Union and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the Proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Corresponding State or the members of the Joint State Public Service Commission serving the needs of the Corresponding States, as the case may be, and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

[1][**378A. Special provisions as to duration of Andhra Pradesh Legislative Assembly.**—Notwithstanding anything contained in article 172, the Legislative Assembly of the State of Andhra Pradesh as constituted under the provisions of section 28 and 29 of the State Reorganisation Act, 1956, shall, unless sooner dissolved, continue for a period of five years from the date referred to in the said section 29 and no longer and the expiration of the said period shall operate as a dissolution of that Legislative Assembly.]

379-391. *Rep. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956)].*

392. Power of the President to remove difficulties.—(1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by any of modification, addition or omission, as he may deem to be necessary or expedient:

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V.

(2) Every order made under clause (1) shall be laid before Parliament.

(3) The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of the Constitution, be exercisable by the Governor-General of the Dominion of India.

1. Ins. by the Constitution (Seventh Amendment) Act, 1956, sec. 24.

PART XXII

SHORT TITLE, COMMENCEMENT, [1][AUTHORITATIVE TEXT IN HINDI] AND REPEALS

393. Short title.—This Constitution may be called the Constitution of India.

394. Commencement.—This article and articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1950, which day is referred to in this Constitution as the commencement of this Constitution.

[2][**394A. Authoritative text in the Hindi language.**—(1) The President shall cause to be published under his authority—

(a) the translation of this Constitution in the Hindi language signed by members of the Constituent Assembly, with such modifications as may be necessary to bring it in conformity with the language style and terminology adopted in the authoritative texts of Central Acts in the Hindi language, and incorporating therein all the amendments of this Constitution made before such publication; and

(b) the translation in the Hindi language of every amendment of this Constitution made in the English language.

(2) The translation of this Constitution and of every amendment thereof published under clause (1) shall be construed to have the same meaning as the original thereof and if any difficulty arises in so construing any part of such translation, the President shall cause the same to be revised suitably.

(3) The translation of this Constitution and of every amendment thereof published under this Article shall be deemed to be, for all purposes, the authoritative text thereof in the Hindi language.]

395. Repeals.—The Indian Independence Act, 1947 and the Government of India Act, 1935, together with all enactments amending or supplementing the latter Act, but not including the Abolition of Privy Council Jurisdiction Act, 1949 are hereby repealed.

---

1. Ins. by the Constitution (Fifty-eighth Amendment) Act, 1987, sec. 2 (w.e.f. 9-12-1987).
2. Ins. by the Constitution (Fifty-eighth Amendment) Act, 1987, sec. 3 (w.e.f. 9-12-1987).

[1][*FIRST SCHEDULE*

[*Articles 1 and 4*]

I. THE STATES

Name	Territories
1. Andhra Pradesh	[2][The territories specified in sub-section (1) of section 3 of the Andhra State Act, 1953, sub-section (1) of section 3 of the States Reorganisation Act, 1956, the First Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959, and the Schedule to the Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968, but excluding the territories specified in the Second Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959.]
2. Assam	The territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas, but excluding the territories specified in the Schedule to the Assam (Alteration of Boundaries) Act, 1951, [3][and the territories specified in sub-section (1) of section 3 of the State of Nagaland Act, 1962] [4][and the territories specified in sections 5, 6 and 7 of the North-Eastern Areas (Reorganisation) Act, 1971.]
3. Bihar	[5][The territories which immediately before the commencement of this Constitution were either comprised in the Province of Bihar or were being administered as if they formed part of that Province and the territories specified in clause (i) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, but excluding the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956, and the territories specified in clause (b) of sub-section (1) of section 3 of the first mentioned Act [6][and the territories specified in section 3 of the Bihar Reorganisation Act, 2000].
[7][4. Gujarat	The territories referred to in sub-section (1) of section 3 of the Bombay Reorganisation Act, 1960.]

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 2, for the First Schedule.
2. Subs. by the Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968 (36 of 1968), sec. 4, for the former entry (w.e.f. 1-10-1968).
3. Added by the State of Nagaland Act, 1962 (27 of 1962), sec. 4 (w.e.f. 1-12-1963).
4. Added by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 9 (w.e.f. 21-1-1972).
5. Subs. by the Bihar and Uttar Pradesh (Alternation of Boundaries) Act, 1968 (24 of 1968), sec. 4, for the former entry (w.e.f. 10-6-1970).
6. Added by the Bihar Reorganisation Act, 2000 (30 of 2000), sec. 5.
7. Subs. by the Bombay Reorganisation Act, 1960) (11 of 1960), sec. 4, for entry 4 (w.e.f. 1-5-1960).

Name	Territories
5. Kerala	The territories specified in sub-section (1) of section 5 of the States Reorganisation Act, 1956.
6. Madhya Pradesh	The territories specified in sub-section (1) of section 9 of the States Reorganisation Act, 1956 [1][and the First Schedule to the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959] [2][but excluding the territories specified in section 3 of the Madhya Pradesh Reorganisation Act, 2000].
[3][7. Tamil Nadu]	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Madras or were being administered as if they formed part of that Province and the territories specified in section 4 of the States Reorganisation Act, 1956, [4][and the Second Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959] but excluding the territories specified in sub-section (1) of section 3 and sub-section (1) of section 4 of the Andhra State Act, 1953 and [5][the territories specified in clause (b) of sub-section (1) of section 5, section 6 and clause (d) of sub-section (1) of section 7 of the States Reorganisation Act, 1956 and the territories specified in the First Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959].
[6][[7][8. Maharashtra	The territories specified in sub-section (1) of section 8 of the States Reorganisation Act, 1956, but excluding the territories referred to in sub-section (1) of section 3 of the Bombay Reorganisation Act, 1960.]
[6][[8][9. Karnataka]	The territories specified in sub-section (1) of section 7 of the States Reorganisation Act, 1956 [9][but excluding the territory specified in the Schedule to the Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968].

1. Ins. by the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959 (47 of 1959), sec. 4 (w.e.f. 1-10-1959).
2. Added by the Madhya Pradesh Reorganisation Act, 2000 (28 of 2000), sec. 5.
3. Subs. by the Madras State (Alteration of Name) Act, 1968 (53 of 1968), sec. 5, for "7. Madras" (w.e.f. 14-1-1969).
4. Ins. by the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 (56 of 1959), sec. 6 (w.e.f. 14-1-1969).
5. Subs. by the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 (56 of 1959), sec. 6 for, certain words (w.e.f. 1-4-1960).
6. Entries 8 to 14 renumbered as entries 9 to 15 by the Bombay Reorganisation Act, 1960 (11 of 1960), sec. 4 (w.e.f. 1-5-1960).
7. Ins. by the Bombay Reorganisation Act, 1960 (11 of 1960), sec. 4 (w.e.f. 1-5-1960).
8. Subs. by the Mysore State (Alteration of Name) Act, 1973 (31 of 1973), sec. 5, for "9. Mysore" (w.e.f. 1-10-1973).
9. Ins. by the Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968 (36 of 1968), sec. 4 (w.e.f. 1-10-1968).

Name	Territories
[1][10.] Orissa	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Orissa or were being administered as if they formed part of that Province.
[1][11.] Punjab	The territories specified in section 11 of the States Reorganisation Act, 1956 [2][and the territories referred to in Part II of the First Schedule to the Acquired Territories (Merger) Act, 1960] [3][but excluding the territories referred to in Part II of the First Schedule to the Constitution (Ninth Amendment) Act, 1960] [4][and the territories specified in sub-section (1) of section 3, section 4 and sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966].
[1][12.] Rajasthan	The territories specified in section 10 of the States Reorganisation Act, 1956 [5][but excluding the territories specified in the First Schedule to the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959].
[1][13.] Uttar Pradesh	[6][The territories which immediately before the commencement of this Constitution were either comprised in the Province known as the United Provinces or were being administered as if they formed part of that Province, the territories specified in clause (b) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968 [7][and the territories specified in section 3 of the Uttar Pradesh Reorganisation Act, 2000], and the territories specified in clause (b) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979, but excluding the territories specified in clause (a) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, and the territories specified in clause (a) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979.]

1. Entries 8 to 14 renumbered as entries 9 to 15 by the Bombay Reorganisation Act, 1960 (11 of 1960), sec. 4 (w.e.f. 1-5-1960).
2. Ins. by the Acquired Territories (Merger) Act, 1960 (64 of 1960), sec. 4 (w.e.f. 17-1-1961).
3. Added by the Constitution (Ninth Amendment) Act, 1960, sec. 3 (w.e.f. sec. 3 (w.e.f. 17-1-1961).
4. Ins. by the Punjab Reorganisation Act, 1966 (31 of 1966), sec. 7 (w.e.f. 1-11-1966).
5. Ins. by the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959 (47 of 1959), sec. 4 (w.e.f. 1-10-1959).
6. Subs. by the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979 (31 of 1979), sec. 5, for the former entry (w.e.f. 15-9-1983).
7. Ins. by the Uttar Pradesh Reorganisation Act, 2000 (29 of 2000), sec. 5.

Name	Territories
[1][14.] West Bengal	The territories which immediately before the commencement of this Constitution were either comprised in the Province of West Bengal or were being administered as if they formed part of that Province in the territory of Chandernagore as defined in clause (c) of section 2 of the Chandernagore (Merger) Act, 1954, and also the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956.
[1][15.] Jammu and Kashmir	The territory which immediately before the commencement of this Constitution are comprised in the Indian State of Jammu and Kashmir.
[2][16. Nagaland	The territories specified in sub-section (1) of section 3 of the State of Nagaland Act, 1962.]
[3][17. Haryana	[4][The territories specified in sub-section (1) of section 3 of the Punjab Reorganisation Act, 1966 and the territories specified in clause (a) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979, but excluding the territories specified in clause (b) of sub-section (1) of section 4 of that Act.]]
[5][18. Himachal Pradesh	The territories which immediately before the commencement of this Constitution were being administered as if they were Chief Commissioners' Provinces under the names of Himachal Pradesh and Bilaspur and the Territories specified in sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966.]
[6][19. Manipur	The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Manipur.
20. Tripura	The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Tripura.
21. Meghalaya	The territories specified in section 5 of the North-Eastern Areas (Reorganisation) Act, 1971.]

1. Entries 8 to 14 renumbered as entries 9 to 15 by the Bombay Reorganisation Act, 1960 (11 of 1960), sec. 4 (w.e.f. 1-5-1960).
2. Ins. by the State of Nagaland Act, 1962 (27 of 1962), sec. 4 (w.e.f. 1-12-1963).
3. Ins. by the Punjab Reorganisation Act, 1966 (31 of 1966), sec. 7 (w.e.f. 1-11-1966).
4. Subs. by the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979 (31 of 1979), sec. 5, for the former entry (w.e.f. 15-9-1983).
5. Ins. by the State of Himachal Pradesh Act, 1970 (53 of 1970), sec. 4 (w.e.f. 25-1-1971).
6. Ins. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 9 (w.e.f. 21-1-1972).

Name	Territories
[1][22. Sikkim	The territories which immediately before the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, were comprised in Sikkim.]
[2][23. Mizoram	The territories specified in section 6 of the North Eastern Areas (Reorganisation) Act, 1971.]
[3][24. Arunachal Pradesh	The territories specified in section 7 of the North Eastern Areas (Reorganisation) Act, 1971.]
[4][25. Goa	The territories specified in section 3 of the Goa, Daman and Diu Reorganisation Act, 1987.]
[5][26. Chhattisgarh	The territories specified in section 3 of the Madhya Pradesh Reorganisation Act, 2000.]
[6][27. Uttaranchal	The territories specified in section 3 of the Uttar Pradesh Reorganisation Act, 2000.]
[7][28. Jharkhand	The territories specified in section 3 of the Bihar Reorganisation Act, 2000.]
II. THE UNION TERRITORIES	
1. Delhi	The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of Delhi.
[8][***]	
[9][***]	
[10][2.] The Andaman and Nicobar Islands	The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of the Andaman and Nicobar Islands.

1. Ins. by the Constitution (Thirty-sixth Amendment) Act, 1975, sec. 2 (w.e.f. 26-4-1975).
2. Ins. by the State of Mizoram Act, 1986 (34 of 1986), sec. 4 (w.e.f. 20-2-1987).
3. Ins. by the State of Arunachal Pradesh Act, 1986 (69 of 1986), sec. 4 (w.e.f. 20-2-1987).
4. Ins. by the Goa, Daman and Diu Reorganisation Act 1987 (18 of 1987), sec. 5 (w.e.f. 30-5-1987).
5. Ins. by Madhya Pradesh Reorganisation Act, 2000 (28 of 2000), sec. 5.
6. Ins. by Uttar Pradesh Reorganisation Act, 2000 (29 of 2000), sec. 5.
7. Ins. by Bihar Reorganisation Act, 2000 (30 of 2000), sec. 5.
8. Entry 2 relating to "Himachal Pradesh" omitted by the State of Himachal Pradesh Act, 1970 (53 of 1970), sec. 4 (w.e.f. 25-1-1971).
9. Entries relating to Manipur and Tripura omitted by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 9 (w.e.f. 21-1-1972).
10. Entries 4 to 9 renumbered as entries 2 to 7 by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 9 (w.e.f. 21-1-1972).

Name	Territory
[1][3.] [2][Lakshadweep]	The territory specified in section 6 of the States Reorganisation Act, 1956.
[3][[1][4.] Dadra and Nagar Haveli	The territory which immediately before the eleventh day of August, 1961 was comprised in Free Dadra and Nagar Haveli.]
[4][[1][[5][5.] Daman and Diu	The territories specified in section 4 of the Goa, Daman and Diu Reorganisation Act, 1987.]]
[6][[1][6.] Pondicherry	The territories which immediately before the sixteenth day of August, 1962, were comprised in the French Establishments in India known as Pondicherry, Karikal, Mahe and Yanam.]
[7][[1][7.] Chandigarh	The territories specified in section 4 of the Punjab Reorganisation Act, 1966.]
[8][***]	
[9][***]	

1. Entries 4 to 9 renumbered as entries 2 to 7 by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 9 (w.e.f. 21-1-1972).
2. Subs. by the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act, 1973 (34 of 1973), sec. 5, for "The Laccadive, Minicoy and Amindivi Islands" (w.e.f. 1-11-1973).
3. Ins. by the Constitution (Tenth Amendment) Act, 1961, sec. 2.
4. Ins. by the Constitution (Twelfth Amendment) Act, 1962, sec. 2.
5. Subs. by the Goa, Daman and Diu Reorgnisation Act, 1987 (18 of 1987), sec. 5, for entry 5 (w.e.f. 30-5-1987).
6. Ins. by the Constitution (Fourteenth Amendment) Act, 1962, sec. 3 and sec. 7 (w.e.f. 16-8-1962).
7. Ins. by the Punjab Reorganisation Act, 1966 (31 of 1966), sec. 7 (w.e.f. 1-11-1966).
8. Entry 8 relating to Mizoram omitted and entry 9 relating to Arunachal Pradesh renumbered as entry 8 by the State of Mizoram Act, 1986 (34 of 1986), sec. 4 (w.e.f. 20-2-1987).
9. Entry 8 relating to Arunachal Pradesh as renumbered by Act 34 of 1986, sec. 4 omitted by the State of Arunachal Pradesh Act, 1986 (69 of 1986), sec. 4 (w.e.f. 20-2-1987).

SECOND SCHEDULE

[Articles 59(3), 65(3), 75(6), 97, 125, 148(3), 158(3), 164(5),186 and 221]

PART A

PROVISIONS AS TO THE PRESIDENT AND THE GOVERNORS OF STATES [1][***]

1. There shall be paid to the President and to the Governors of the States [1][***] the following emoluments per mensem, that is to say:—

The President [2][10,000 rupees

The Governor of a State [3][5,500 rupees

2. There shall also be paid to the President and to the Governors of the States [4][***] such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution.

3. The President and the Governors of [5][the States] throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4. While the Vice-President or any other person is discharging the functions of, or is acting as, President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be.

[6][***]

PART C

PROVISIONS AS TO THE SPEAKER AND THE DEPUTY SPEAKER OF THE HOUSE OF THE PEOPLE AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE COUNCIL OF STATES AND THE SPEAKER AND THE DEPUTY SPEAKER OF THE LEGISLATIVE ASSEMBLY [7][***] AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE LEGISLATIVE COUNCIL OF [8][A STATE].

---

1. The words and letter "specified in Part A of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956. sec. 29 and Sch.
2. Raised to Rs. 15,000 p.m. by the President's Pension (Amendment) Act, 1985 and further raised to Rs. 20,000 p.m. by the President's Emoluments and Pension (Amendment) Act, 1990.
3. Raised to Rs. 11,000 p.m. by the Governor's Emoluments, Allowances and Privileges (Amendment) Act, 1987 (17 of 1987).
4. The words "so specified" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
5. Subs. by the constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for "such States".
6. Part B omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
7. The words and letter "or a State in Part A of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
8. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for "any such State".

7. There shall be paid to the Speaker of the House of the People and the Chairman of the Council of States such salaries and allowances as were payable to the Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution, and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement.

8. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly [1][***] and to the Chairman and the Deputy Chairman of the Legislative Council of [2][a State]. Such salaries and allowances as were payable respectively to the Speaker and the Deputy Speaker of the Legislative Assembly and the President and the Deputy President of the Legislative Council of the corresponding Province immediately before the commencement of this Constitution and, where the corresponding Province had no Legislative Council immediately before such commencement, there shall be paid to the Chairman and the Deputy Chairman of the Legislative Council of the State such salaries and allowances as the Governor of the State may determine.

PART D

PROVISIONS AS TO THE JUDGES OF THE SUPREME COURT AND OF THE HIGH COURTS [3][***]

9. (1) There shall be paid to the Judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:—

The Chief Justice [4][10,000 rupees]

Any other Judge [5][9,000 rupees]:

Provided that if a Judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court [6][shall be reduced—

(a) by the amount of that pension, and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and

---

1. The words and letter "of a State specified in Part A of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for "such State".
3. The words and letter "in States in Part A of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 25.
4. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986, sec. 4, for "5,000 rupees" (w.e.f. 1-4-1986).
5. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986, sec. 4, for "4,000 rupees" (w.e.f. 1-4-1986).
6. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 25, for "shall be reduced by the amount of that pension".

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity].

(2) Every Judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a Judge who, immediately before the commencement of this Constitution,—

(a) was holding office as the Chief Justice of the Federal Court and has become on such commencement the Chief Justice of the Supreme Court under clause (1) of article 374, or

(b) was holding office as any other Judge of the Federal Court and has on such commencement become a Judge (other than the Chief Justice) of the Supreme Court under the said clause,

during the period he holds office as such Chief Justice or other Judge, and every Judge who so becomes the Chief Justice or other Judge of the Supreme Court shall, in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, be entitled to receive in addition to the salary specified in sub-paragraph (1) of this paragraph as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement.

(4) Every Judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave of absence (including leave allowances) and pension of the Judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the Judges of the Federal Court.

10. [1][(1). There shall be paid to the Judges of High Courts, in respect of time spent on actual service, salary at the following rates per mensem, that is to say,—

The Chief Justice [2][9,000 rupees]

Any other Judge [3][8,000 rupees]:

Provided that if a Judge of a High Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the High Court shall be reduced—

(a) by the amount of that pension, and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and

---

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 25, for sub-paragraph (1).
2. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986 (34 of 1986), sec. 4, for "4,000 rupees" (w.e.f. 1-4-1986).
3. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986 (34 of 1986), sec. 4, for "3,500 rupees" (w.e.f. 1-4-1986).

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.]

(2) Every person who immediately before the commencement of this Constitution—

(a) was holding office as the Chief Justice of a High Court in any Province and has on such commencement become the Chief Justice of the High Court in the corresponding State under clause (1) of article 376, or

(b) was holding office as any other Judge of a High Court in any Province and has on such commencement become a Judge (other than the Chief Justice) of the High Court in the corresponding State under the said clause,

shall, if he was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, be entitled to receive in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, in addition to the salary specified in the said sub-paragraph as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement.

[1][(3) Any person who, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, was holding office as the Chief Justice of the High Court of a State specified in Part B of the First Schedule and has on such commencement become the Chief Justice of the High Court of a State specified in the said Schedule as amended by said Act, shall, if he was immediately before such commencement drawing any amount as allowance in addition to his salary, be entitled to receive in respect of time spent on actual service as such Chief Justice, the same amount as allowance in addition to the salary specified in sub-paragraph (1) of this paragraph.]

11. In this Part, unless the context otherwise requires—

(a) the expression 'Chief Justice' includes an acting Chief Justice, and a 'Judge' includes an *ad hoc* Judge;

(b) 'actual service' includes—

(i) time spent by a Judge on duty as a Judge or in the performance of such other functions as he may at the request of the President undertake to discharge;

(ii) vacations, excluding any time during which the Judge is absent on leave; and

(iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.

---

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 25, for sub-paragraphs (3) and (4).

PART E

PROVISIONS AS TO THE COMPTROLLER AND AUDITOR-GENERAL OF INDIA

12. (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand[1] rupees per mensem,

(2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on such commencement the Comptroller and Auditor-General of India under article 377 shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing as Auditor-General of India immediately before such commencement.

(3) The rights in respect of leave of absence and pension and the other conditions of service of the Comptroller and Auditor-General of India shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to the Auditor-General of India immediately before the commencement of this Constitution and all references in those provisions to the Governor-General shall be construed as references to the President.

---

1. The Comptroller and Auditor-General of India shall be paid a salary equal to the salary of the Judges of Supreme Court *vide* sec. 3 of Act 56 of 1971. The salary of Judges of the Supreme Court has been raised to Rs. 9,000 per mensem by the Constitution (Fifty-fourth Amendment) Act, 1986.

THIRD SCHEDULE

[Articles 75(4), 99, 124(6), 148(2), 164(3), 188 and 219][1]

Forms of Oaths or Affirmations

I

Form of oath of office for a Minister for the Union:

'I, A.B., do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will bear true faith and allegiance to the Constitution of India as by law established, [2][that I will uphold the sovereignty and integrity of India] that I will faithfully and conscientiously discharge my duties as a Minister for the Union and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.'

II

Form of oath of secrecy for a Minister for the Union:

'I, A.B., do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the Union except as may be required for the due discharge of my-duties as such Minister.'

[3][**III**

A

Form of oath or affirmation to be made by a candidate for election to Parliament:

'I, A.B., having been nominated as a candidate to fill a seat in the Council of States (or the House of the People) do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India.'

B

Form of oath or affirmation to be made by a member of Parliament:

'I, A.B., having been elected (or nominated) a member of the Council of States (or the House of the People) do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter.']

IV

Form of oath or affirmation to be made by the Judges of the Supreme Court and the Comptroller and Auditor-General of India:

'I, A.B., having been appointed Chief Justice (or a Judge) of the Supreme Court of India (or Comptroller and Auditor-General of India) do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$

1. *See* also articles 84(a) and 173(a).
2. Ins. by the Constitution (Sixteenth Amendment) Act, 1963, sec. 5.
3. Subs. by the Constitution (Sixteenth Amendment) Act, 1963, sec. 5, for Form III.

that I will bear true faith and allegiance to the Constitution of India as by law established, [2][that I will uphold the sovereignty and integrity of India,] that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.'

V

Form of oath of office for a Minister for a State:

'I, A.B., do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will bear true faith and allegiance to the Constitution of India as by law established, [1][that I will uphold the sovereignty and integrity of India,] that I will faithfully and conscientiously discharge my duties as a Minister for the State of..... and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will.'

VI

Form of oath of secrecy for a Minister for a State:

'I, A.B., do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the State of..... except as may be required for the due discharge of my duties as such Minister.'

[2][VII A

Form of oath or affirmation to be made by a candidate for election to the Legislature of a State:

'I, A.B., having been nominated as a candidate to fill a seat in Legislative Assembly (or Legislative Council) , do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India.'

B

Form of oath or affirmation to be made by a member of the Legislature of a State:

'I, A.B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter.'

VIII

Form of oath or affirmation to be made by the Judges of a High Court:

'I, A.B., having been appointed Chief Justice (or a Judge) of the High Court at (or of).....do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will bear true faith and allegiance to the Constitution of India as by law established, [1][that I will uphold the sovereignty and integrity of India,] that I will duly and faithfully and to the best of my ability, knowledge, and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.

---

1. Ins. by the Constitution (Sixteenth Amendment) Act, 1963, sec. 5.
2. Subs. by the Constitution (Sixteenth Amendment) Act, 1963, sec. 5, for Form VII.

[1][*FOURTH SCHEDULE*

[Articles 4(1) and 80(2)]

Allocation of seats in the Council of States

For each State or Union territory specified in the first column of the following table, there shall be allotted the number of seats specified in the second column thereof opposite to that State or that Union territory, as the case may be.

TABLE

1. Andhra Pradesh	18
2. Assam	7
3. Bihar	[2][16]
[3][4. Jharkhand	6]
[4][*[5.] Goa	1]
[5][*[6.] Gujarat	11]
[6][*[7.] Haryana	5]
*[8.] Kerala	9
[7][9. Chattisgarh	5]
*[10.] Madhya Pradesh	[8][11]
[9][*[11.] Tamil Nadu]	[10][18]
[11][*[12.] Maharashtra	19]
[12][*[13.] Karnataka]	12
*[14.] Orissa	10

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 3, for the Fourth Schedule.
2. Subs. by the Bihar Reorganisation Act, 2000 (30 of 2000), sec. 7, for "22".
3. Ins. by the Bihar Reorganisation Act, 2000 (30 of 2000), sec. 7.
4. Ins. by Goa, Daman and Diu Reorganization Act, 1987 (18 of 1987), sec. 6 (w.e.f. 30-5-1987).
5. Subs. by the Bombay Reorganisation Act, 1960 (11 of 1960), sec. 6 (w.e.f. 1-5-1960).
6. Ins. by the Punjab Reorganisation Act, 1966 (31 of 1966), sec. 9 (w.e.f. 1-11-1966).
7. Ins. by Madhya Pradesh Reorganisation Act, 2000 (28 of 2000), sec. 7.
8. Subs. by the Madhya Pradesh Reorganisation Act, 2000 (28 of 2000), sec. 7, for "16'.
9. Subs. by the Madras State (Alteration of Name) Act, 1968 (53 of 1968), sec. 5 for "Madras" (w.e.f. 14-1-1969).
10. Subs. by the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 (56 of 1959), sec. 8, for "17" (w.e.f. 1-4-1960).
11. Ins. by the Bombay Reorganisation Act, 1960 (11 of 1960), sec. 6 (w.e.f. 1-5-1960).
12. Subs. by the Mysore State (Alternation of Name) Act, 1973 (31 of 1973), sec. 5, for "Mysore" (w.e.f. 1-11-1973).

*. Entry numbers have been renumbered by (i) the North Eastern Areas (Reorganisation) Act, 1971 (81 of 1971); (ii) the State of Mizoram Act, 1986 (34 of 1986); (iii) the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987); (iv) the Madhya Pradesh Reorganisation Act, 2000 (28 of 2000); (v) the Uttar Pradesh Reorganisation Act, 2000 (29 of 2000); (vi) the Bihar Reorganisation Act, 2000 (30 of 2000).

*[15.]	Punjab	[1][7]
*[16.]	Rajasthan	10
[2][17.	Uttaranchal	3]
*[18.]	Uttar Pradesh	[3][31]
*[19.]	West Bengal	16
*[20.]	Jammu and Kashmir	4
[4][*[21.]	Nagaland	1]
[5][*[22.]	Himachal Pradesh	3]
[6][*[23.]	Manipur	1]
*[24.]	Tripura	1
*[25.]	Meghalaya	1
[7][*[26.]	Sikkim	1]
*[27.]	Mizoram	1
*[28.]	Arunachal Pradesh	1
*[29.]	Delhi	3
*[30.]	Pondicherry.	1
	Total	[8][233]]

---

1. Subs. by the Punjab Reorganization Act, 1966, (31 of 1966), sec. 9, for "11" (w.e.f. 1-11-1966).
2. Ins. by the Uttar Pradesh Reorganisation Act, 2000 (29 of 2000), sec. 7.
3. Subs. by the Uttar Pradesh Reorganisation Act, 2000 (29 of 2000), sec. 7, for "34".
4. Ins. by the State of Nagaland Act, 1962 (27 of 1962), sec. 6 (w.e.f. 1-12-1963).
5. Ins. by the State of Himachal Pradesh Act, 1970 (53 of 1970), sec. 5 (w.e.f. 25-1-1971).
6. Subs. by the North Eastern Areas (Re-organisation) Act, 1971 (81 of 1971), sec. 10.
7. Ins. by the Constitution (Thirty-sixth Amendment) Act, 1975, sec. 4 (w.e.f. 26-1-1975).
8. Subs. by the Goa, Daman and Diu Reorganisation Act, 1987, sec. 6, for "232" (w.e.f. 30-5-1987)

*. Entry numbers have been renumbered by (i) the North Eastern Areas (Reorganisation) Act, 1971 (81 of 1971); (ii) the State of Mizoram Act, 1986 (34 of 1986); (iii) the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987); (iv) the Madhya Pradesh Reorganisation Act, 2000 (28 of 2000); (v) the Uttar Pradesh Reorganisation Act, 2000 (29 of 2000); (vi) the Bihar Reorganisation Act, 2000 (30 of 2000).

FIFTH SCHEDULE

[*Article 244(1)*]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

PART A

GENERAL

1. Interpretation.—In this Schedule, unless the context otherwise requires, the expression 'State' [1][***] does not include the [2][States of Assam] [3][[4][, Meghalaya, Tripura and Mizoram]].

2. Executive power of a State in Scheduled Areas.—Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.

3. Report by the Governor [5][***] to the President regarding the administration of Scheduled Areas.—The Governor [5][***] of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

PART B

ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

4. Tribes Advisory Council.—(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State:

Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor [6][***].

---

1. The words and letters "means a State specified in Part A or Part B of the First Schedule but" omittted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71, for "State of Assam" (w.e.f. 21-1-1972).
3. Subs. by the State of Mizoram Act, 1986 (34 of 1986), sec. 39, for "Meghalaya and Tripura" (w.e.f. 20-2-1987).
4. Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 3, for "and Meghalaya" (w.e.f. 1-4-1985).
5. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
6. The words "or the Rajpramukh, as the case may be" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.

(3) The Governor [1][***] may make rules prescribing or regulating, as the case may be,

(a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof,

(b) the conduct of its meetings and its procedure in general; and

(c) all other incidental matters.

5. Law applicable to Scheduled Areas.—(1) Notwithstanding anything in this Constitution, the Governor [2][***] may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor [2][***] may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor [1][***] may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Government [1][***] making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C

SCHEDULED AREAS

6. Scheduled Areas.—(1) In this Constitution, the expression 'Scheduled Areas' means such areas as the President may by order[3] declare to be Scheduled Areas.

---

1. The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. The words "or the Rajpramukh, as the case may be" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
3. *See* the Scheduled Areas (Part A States) Order, 1950 (C.O. 9), the Scheduled areas (Part B States) Order, 1950 (C.O. 26), the Scheduled Areas (Himachal Pradesh) Order, 1975 (C.O. 102) and the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 (C.O. 109).

(2) The President may at any time by order[1]—

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

[2][(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;]

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

[2][(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are as to be Scheduled Areas,]

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D

AMENDMENT OF THE SCHEDULE

7. Amendment of the Schedule.—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

---

1. *See* the Madras Scheduled Area (Cesser) Order, 1951 (C.O. 30) and the Andhra Scheduled Areas (Cesser) Order, 1955 (C.O. 50).
2. Ins. by the Fifth Schedule to the Constitution Amendment) Act, 1976 (101 of 1976), sec. 2.

SIXTH SCHEDULE

[Articles 244(2) and 275(1)]

Provisions as to the Administration of Tribal Areas in [1][[2][the States of Assam, [3][Meghalaya, Tripura] and Mizoram]]

1. Autonomous districts and autonomous regions.—(1) Subject to the provisions of this paragraph, the tribal areas in each item of [4][[5][Parts I, II and IIA] and in Part III] of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

(3) The Governor may, by public notification,—

(a) include any area in [5][any of the Parts] of the said table,

(b) exclude any area from [5][any of the Parts] of the said table,

(c) create a new autonomous district,

(d) increase the area of any autonomous district,

(e) diminish the area of any autonomous district,

(f) unite two or more autonomous districts or parts thereof so as to form one autonomous district,

[6][(ff) alter the name of any autonomous district,]

(g) define the boundaries of any autonomous district:

Provided that no order shall be made by the Governor under clauses (c), (d), (e) and (f) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule:

[7][Provided further that any order made by the Governor under this sub-paragraph may contain such incidental and consequential provisions (including any amendment of paragraph 20 and of any item in any of the Parts of the said table) as appear to the Governor to be necessary for giving effect to the provisions of the order.]

2. Constitution of District Councils and Regional Councils.—[8][(1) There shall be a District Council for each autonomous district consisting of not more than thirty members,

1. Subs. by the State of Mizoram Act, 1986 (34 of 1986), sec. 39, for certain words (w.e.f. 20-2-1987).
2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch., for "Assam" (w.e.f. 21-1-1972).
3. Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 4, for "and Meghalaya" (w.e.f. 1-4-1985).
4. Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 4, for "Parts I and II" (w.e.f. 1-4-1985).
5. Subs. by the North-Eastern (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch., for "Part A" (w.e.f. 21-1-1972).
6. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch. (w.e.f. 2-4-1970).
7. Ins. by the North-Eastern Areas (Reorganisation) Act, 1971, sec. 71(i) and Eighth Sch. (w.e.f. 21-1-1972).
8. Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch., for sub-paragraph (i) (w.e.f. 2-4-1970).

of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.]

(2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of 'the District Council of (*name of district*)' and 'the Regional Council of (*name of region*)', shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) Subject to the provisions of this Schedule, the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned, and such rules shall provide for—

(a) the composition of the District Councils and Regional Councils and the allocation of seats therein;
(b) the delimitation of territorial constituencies for the purpose of elections to those Councils;
(c) the qualifications for voting at such elections and the preparation of electoral rolls therefor;
(d) the qualifications for being elected at such elections as members of such Councils;
(e) the term of office of members of [1][Regional Councils];
(f) any other matter relating to or connected with elections or nominations to such Councils;
(g) the procedure and the conduct of business [2][including the power to act notwithstanding any vacancy] in the District and Regional Councils;
(h) the appointment of officers and staff of the District and Regional Councils.

[2][(6A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor:

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not

1. Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch., for "such Councils" (w.e.f. 2-4-1970).
2. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch. (w.e.f. 2-4-1970).

exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate:

Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces.]

(7) The District or the Regional Council may after its first constitution make rules [1][with the approval of the Governor] with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules [1][with like approval] regulating—

(a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business; and

(b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be:

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council.

[2][***]

[3]3. Powers of the District Councils and Regional Councils to make laws.—(1) The Regional Council for an autonomous region in respect of all areas within such region and

---

1. Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch. (w.e.f. 2-4-1970).
2. Second proviso omitted by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch. (w.e.f. 2-4-1970).
3. Paragraph 3 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s. 2, so as to substitute sub-paragraph (3) as under:—

"(3) Save as otherwise provided in sub-paragraph (2) of paragraph 3A, all laws made under this paragraph or sub-paragraph (1) of paragraph 3A shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect."

After paragraph 3, the following paragraph has been inserted in its application to the State of Assam by s. 2 *ibid.*, namely:—

"3A. *Additional powers of the North Cachar hills Autonomous Council and the Karbi Anglong Autonomous Council to make law.* (1) Without prejudice to the provisions of paragraph 3, the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council within their respective districts, shell have power to make laws with respect to—

(a) industries, subject to the provisions of entries 7 and 52 of List I of the Seventh Schedule;
(b) communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I of the Seventh Schedule; municipal tramways, ropeways, inland waterways and traffic thereon subject to the provisions of List I and List III of the Seventh Schedule with regard to such waterways; vehicles other than mechanically propelled vehicles;
(c) preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice; cattle pounds;
(d) primary and secondary education;
(e) agriculture, including agricultural education and research, protection against pests and prevention of plant diseases;
(f) fisheries;

(contd. on next page)

the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:
Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes [1][by the Government of the State concerned] in accordance with the law for the time being in force authorising such acquisition;

(b) the management of any forest not being a reserved forest;

(c) the use of any canal or water-course for the purpose of agriculture;

(d) the regulation of the practice of *jhum* or other forms of shifting cultivation;

(e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(contd. from previous page)

(g) water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I of the Seventh Schedule;

(h) social security and social insurance; employment and unemployment;

(i) flood control schemes for protection of villages, paddy fields, markets, towns, *etc.* (not of technical nature);

(j) theatre and dramatic performances, cinemas subject to the provisions of entry 60 of List I of the Seventh Schedule; sports entertainments and amusements;

(k) public health and sanitation, hospitals and dispensaries:

(l) minor irrigation;

(m) trade and commerce in, and the production, supply and distribution of, food stuffs, cattle fodder, raw cotton and raw jute;

(n) Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under any law made by parliament to be of national importance; and

(o) alienation of land.

(2) All laws made by the North Cachar hills Autonomous Council and the Karbi Anglong Autonomous Council under paragraph 3 or under this paragraph shall, in so far as they relate to matters specified in List III of the Seventh Schedule, be submitted forthwith to the governor who shall reserve the same for the consideration of the President.

(3) When a law is reserved for the consideration of the President, the President shall declare either that the assents to the said law or that he withholds assent therefrom:
Provided that the President may direct the Governor to return the law to the North Cachar Hills Autonomous Council or the Karbi Anglong Autonomous Council, as the case may be, together with a message requesting that the said Council will reconsider the law or any specified provisions thereof and, in particular, will, consider the desirability of introducing any such amendments as he may recommend in his message and, when the law is so returned, the said Council shall consider the law accordingly within a period of six months from the date of receipt of such message and, if the law is again passed by the said Council with or without amendment it shall presented again to the President for his consideration."

1. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch., for certain words (w.e.f. 21-1-1972).

(g) the appointment or succession of Chiefs or Headmen;
(h) the inheritance of property;
[1][(i) marriage and divorce;]
(j) social customs.

(2) In this paragraph, a 'reserved forest' means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

(3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

4. Administration of justice in autonomous districts and autonomous regions.—(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any court constituted in that behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-paragraph (1) of this paragraph within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.

(3) The High Court [2][***] shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.

(4) A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating—

(a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph;
(b) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph;
(c) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph;
(d) the enforcement of decisions and orders of such Councils and courts:

---

1. Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch., for clause (i) (w.e.f. 2-4-1970).
2. The words "of Assam" omitted by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch. (w.e.f. 21-1-1972).

(e) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.

[1][(5) On and from such date as the President may, [2][after consulting the Government of the State concerned], by notification appoint in this behalf, this paragraph shall have effect in relation to such autonomous district or region as may be specified in the notification, as if—

(i) in sub-paragraph (1), for the words "between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply,", the words "not being suits and cases of the nature referred to in sub- paragraph (1) of paragraph (5) of this Schedule, which the Governor may specify in this behalf," had been substituted;

(ii) sub-paragraphs (2) and (3) had been omitted;

(iii) in sub-paragraph (4)—

(a) for the words "A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating', the words "the Governor may make rules regulating' had been substituted; and

(b) for clause (a), the following clause had been substituted, namely:—

(a) the constitution of village councils and courts, the powers to be exercised by them under this paragraph and the courts to which appeals from the decisions of village councils and courts shall lie;"

(c) for clause (c), the following clause had been substituted, namely:—

"(c) the transfer of appeals and other proceedings pending before the Regional or District Council or any court constituted by such Council immediately before the date appointed by the President under sub-paragraph (5);" and

(d) in clause (e), for the words, brackets and figures "sub-paragraphs (1) and (2)", the word, brackets and figure "sub-paragraph (1)" had been substituted.]

5. Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898,[3] on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences.—(1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or, as the case may be, the Code of Criminal Procedure, 1898[3], as he deems appropriate, and thereupon the said Council,

---

1. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch. (w.e.f. 24-4-1970).
2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch., for certain words (w.e.f. 21-1-1972).
3. *See* now the Code of Criminal Procedure, 1973 (2 of 1974).

court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898[1], shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.

[2][(4) On and from the date appointed by the President under sub-paragraph (5) of paragraph 4 in relation to any autonomous district or autonomous region, nothing contained in this paragraph shall, in its application to that district or region, be deemed to authorise the Governor to confer on the District Council or Regional Council or on courts constituted by the District Council any of the powers referred to in sub-paragraph (1) of this paragraph.]

[3][**6. Powers of the District Council to establish primary schools, *etc.***—(1) The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, [4][cattle pounds], ferries, fisheries, roads, road transport and waterways in the district and may, with the previous approval of the Governor, make regulations for the regulation and control thereof and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.

(2) The Governor may, with the consent of any District Council, entrust either conditionally or unconditionally to that Council or to its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive power of the State [5][***] extends.]

7. District and Regional Funds.—(1) There shall be constituted for each autonomous district, a District Fund for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.

[6][(2) The Governor may make rules for the management of the District Fund, or, as the case may be, the Regional Fund and for the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

1. *See* now the Code of Criminal Procedure, 1973 (2 of 1974).
2. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch. (w.e.f. 2-4-1970).
3. Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch., for paragraph 6 (w.e.f. 2-4-1970).
4. Subs. by the Repealing and Amending Act, 1974 (56 of 1974), sec. 4 , for "cattle ponds".
5. The words "of Assam or Meghalaya, as the case may be", omitted by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch. (w.e.f. 21-1-1972).
6. Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch., for sub-paragraph (2) (w.e.f. 2-4-1970).

(3) The accounts of the District Council or, as the case may be, the Regional Council shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe.

(4) The Comptroller and Auditor-General shall cause the accounts of the District and Regional Councils to be audited in such manner as he may think fit, and the reports of the Comptroller and Auditor General relating to such accounts shall be submitted to the Governor who shall cause them to be laid before the Council.]

8. Powers to assess and collect land revenue and to impose taxes.—(1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed [1][by the Government of the State in assessing lands for the purpose of land revenue in the State generally].

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on persons, resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

(a) taxes on professions, trades, callings and employments;

(b) taxes on animals, vehicles and boats;

(c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(d) taxes for the maintenance of schools, dispensaries or roads.

(4) A Regional Council or District Council, as the case may be, may make regulations to provide for levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph [2][and every such regulation shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect].

[3]**9. Licences or leases for the purpose of prospecting for, or extraction of, minerals.**—(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by [4][the Government of the State] in respect of any area within an autonomous district as may be agreed upon

---

1. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch., for certain words (w.e.f. 21-1-1972).
2. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 sec. 74 and Fourth Sch., (w.e.f. 2-4-1970).
3. Paragraph 9 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988), (67 of 1988), sec. 2, so as to insert the following sub-paragraph after sub-paragraph (2), namely:—

   "(3) The Governor may, by order, direct that the share of royalties to be made over to a District Council under this paragraph shall be made over to that Council within a period of one year from the date of any agreement under sub-paragraph (1) or, as the case may be, of any determination under sub-paragraph (2)."
4. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch., for "the Government of Assam" (w.e.f. 21-1-1972).

between [1][the Government of the State] and the District Court of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.

[2]10. Power of District Council to make regulations for the control of money-lending and trading by non-tribals.—(1) The District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending;

(b) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender;

(c) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in that behalf by the District Council;

(d) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council:

Provided that no regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council:

Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of making of such regulations.

(3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

11. Publication of laws, rules and regulations made under the Schedule.—All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official Gazette of the State and shall on such publication have the force of law.

---

1. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch., for "the Government of Assam" (w.e.f. 21-1-1972).
2. Paragraph 10 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), sec. 2, as under:—
   (a) in the heading, the words "by non-tribals" shall be omitted;
   (b) in sub-paragraph (1), the words "other than Scheduled Tribes" shall be omitted;
   (c) in sub-paragraph (2), for clause (d), the following clause shall be substituted, namely:—
   "(d) prescribe that no person resident in the district shall carry on any trade, whether wholesale or retail, except under a licence issued in that behalf by the District Council."

[1]12. [2][Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous districts and autonomous regions in the State of Assam].—(1) Notwithstanding anything in this Constitution—

(a) no Act of the [3][Legislature of the State of Assam] in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the [3][Legislature of the State of Assam] prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region [4][in the State] unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of Parliament or of the [3][Legislature of the State of Assam] to which the provisions of clause (a) of this sub-paragraph do not apply shall not apply to an autonomous district or an autonomous region [4][in that State], or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

[5][12A. Application of Acts of Parliament and of the Legislature of the State of Meghalaya to autonomous districts and autonomous regions in the State of Meghalaya.—Notwithstanding anything in this Constitution,—

(a) if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-paragraph (1) of paragraph 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under paragraph 8 or paragraph 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be

---

1. Paragraph 12 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s. 2 as under:—
"In paragraph 12, in sub-paragraph (1), for the words and figure "matters specified in paragraph 3 of this Schedule", the words, figures and letter "matters specified in paragraph 3 or paragraph 3A of this Schedule" shall be substituted;
2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71 and Eighth Sch., for the heading (w.e.f. 21-1-1972).
3. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch., for "Legislature of the State" (w.e.f. 21-1-1972).
4. Ins. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch., (w.e.f. 21-1-1972).
5. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71 and Eighth Sch., for paragraph 12A (w.e.f. 21-1-1972).

void and the law made by the Legislature of the State of Meghalaya shall prevail;

(b) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.]

[1][**12AA. Application of Acts of Parliament and of the Legislature of the State of Tripura to the autonomous district and autonomous regions in the State of Tripura.**—Notwithstanding anything in this Constitution—

(a) no Act of the Legislature of the State of Tripura in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Tripura prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to the autonomous district or an autonomous region in that State unless, in either case, the District Council for that district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act direct that the Act shall, in its application to that district or such region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of the Legislature of the State of Tripura to which the provisions of clause (a) of this sub-paragraph do not apply, shall not apply to the autonomous district or an autonomous region in that State, or shall apply to that district or such region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification;

(c) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to the autonomous district or an autonomous region in the State of Tripura, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.

[2][**12B. Application of Acts of Parliament and of the Legislature of the [3][State] of Mizoram to autonomous districts and autonomous regions in the [3][State] of Mizoram.**—Notwithstanding anything in this Constitution,—

(a) no Act of the Legislature of the State of Mizoram in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of Legislature of the State of Mizoram prohibiting or restricting the consumption

1. Subs. by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), sec. 2, for paragraphs 12AA and 12B. Earlier paragraph 12AA was ins. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 4 (w.e.f. 1-4-1985).
2. Subs. by the Government of Union Territories (Amendment) Act, 1971 (83 of 1971), sec. 13, for paragraph 12B (w.e.f. 29-4-1972).
3. Subs. by the State of Mizoram Act, 1986 (34 of 1986)), sec. 39, for "Union Territory" (w.e.f. 20-2-1987).

of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region in that State unless, in either case, the District Council for such district or having jurisdiction over such region, by public notification, so directs, and the District Council, in giving such direction with respect to any Act, may direct that the Act shall, in its application to such district or region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of the Legislature of the State of Mizoram to which the provisions of clause (a) of this sub-paragraph do not apply, shall not apply to an autonomous district or an autonomous region in that State, or shall apply to such district or region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification;

(c) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Mizoram, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.]

13. Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement.—The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the Consolidated Fund of the State [1][***] shall be first placed before the District Council for discussion and then after such discussion be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 202.

[2]**14. Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions.**—(1) The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, including matters specified in clauses (c), (d), (e) and (f) of sub- paragraph (3) of paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

(a) the provision of educational and medical facilities and communications in such districts and regions;

(b) the need for any new or special legislation in respect of such districts and regions; and

(c) the administration of the laws, rules and regulations made by the District and Regional Councils;

and define the procedure to be followed by such Commission.

---

1. The words "of Assam" omitted by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71 and Eighth Sch. (w.e.f. 21-1-1972).

2. Paragraph 14 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), sec. 2 as under:—
In paragraph 14, in sub-paragraph (2), the words "with the recommendations of the Governor with respect thereto" shall be omitted.

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by [1][the Government of the State].

(3) In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State.

[2]**15. Annulment or suspension of acts and resolutions of District and Regional Councils.**—(1) If at any time the Governor is satisfied that an act or resolution of a District or a Regional Council is likely to endanger the safety of India [3][or is likely to be prejudicial to public order], he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.

(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Legislature of the State as soon as possible and the order shall, unless revoked by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made:

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State, the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

[4]**16. Dissolution of a District or a Regional Council.**—[5][(1)] The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a District or a Regional Council, and—

(a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

(b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place

---

1. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71 and Eighth Sch., for "the Government of Assam" (w.e.f. 21-1-1972).
2. Paragraph 15 has been amended in its application to the State of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), sec. 2 as under:—
   (a) in the opening paragraph, for the words "by the Legislature of the State", the words "by him" shall be substituted;
   (b) the proviso shall be omitted.
3. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch. (w.e.f. 2-4-1970).
4. Paragraph 16 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), sec. 2 as under:—
   (a) in sub-paragraph (1), the words "subject to the previous approval of the Legislature of the State" occurring in clause (b), and the second proviso shall be omitted;
   (b) for sub-paragraph (3), the following sub-paragraph shall be substituted, namely:—
   "(3) Every order made under sub-paragraph (1) or sub-paragraph (2) of this paragraph, along with the reasons therefor shall be laid before the Legislature of the State."
5. Paragraph 16 renumbered as sub-paragraph (1) thereof by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch., (w.e.f. 2-4-1970).

the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months:

Provided that when an order under clause (a) of this paragraph has been made, the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election:

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State.

[1][(2) If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule, he may, by public notification assume to himself all or any of the functions or powers vested in or exercisable by the District Council or, as the case may be, the Regional Council and declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf, for a period not exceeding six months:

Provided that the Governor may by a further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion.

(3) Every order made under sub-paragraph (2) of this paragraph with the reasons therefor shall be laid before the Legislature of the State and shall cease to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the orders, unless, before the expiry of that period it has been approved by the State Legislature.]

17. Exclusion of areas from autonomous districts in forming constituencies in such districts.—For the purposes of elections to [2][the Legislative Assembly of Assam or Meghalaya] [3][or Tripura] [4][or Mizoram], the Governor may by order declare that any area within an autonomous district [5][in the State of Assam or Meghalaya [3][or Tripura] [4][or Mizoram], as the case may be,] shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order.

[6][***]

19. Transitional provisions.—(1) As soon as possible after the commencement of this Constitution the Governor shall take steps for the constitution of a District Council for each autonomous district in the State under this Schedule and, until a District Council is so constituted for an autonomous district, the administration of such district shall be vested in the Governor and the following provisions shall apply to the administration of the areas within such district instead of the foregoing provisions of this Schedule, namely:—

---

1. Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch. (w.e.f. 2-4-1970).
2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71 and Eighth Sch., for "the Legislative Assembly of State" (w.e.f. 21-1-1972).
3. Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 4 (w.e.f. 1-4-1985).
4. Ins. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71 and Eighth Sch., (w.e.f. 21-1-1972).
5. Ins. by the State of Mizoram Act, 1986 (34 of 1986), sec. 39 (w.e.f. 20-2-1987).
6. Paragraph 18 omitted by the State of Mizoram Act, 1986 (34 of 1986), sec. 71 and Eighth Sch. (w.e.f. 21-1-1972).

(a) no Act of Parliament or of the Legislature of the State shall apply to any such area unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall, in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit;

(b) the Governor may make regulations for the peace and good government of any such area and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.

(2) Any direction given by the Governor under clause (a) of sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

(3) All regulations made under clause (b) of sub-paragraph (1) of this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

[1][**20. Tribal areas.**—(1) The areas specified in Parts I, II [2][,IIA] and III of the table below shall respectively be the tribal areas within the State of Assam, the State of Meghalaya [2][, the State of Tripura] and the [3][State] of Mizoram.

(2) [4][Any reference in Part I, Part II or Part III of the table below] to any district shall be construed as a reference to the territories comprised within the autonomous district of that name existing immediately before the day appointed under clause (b) of section 2 of the North-Eastern Areas (Reorganisation) Act, 1971:

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b), and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8 and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the [5][Khasi Hills District].

[2][(3) The reference in Part IIA in the table below to the 'Tripura Tribal Areas District' shall be construed as a reference to the territory comprising the tribal areas specified in the First Schedule to the Tripura Tribal Areas Autonomous District Council Act, 1979.]

TABLE

PART I

1. The North Cachar Hills District.
2. [6][The Karbi Anglong District.]

PART II

[5][1. Khasi Hills District.

---

1. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971) sec. 71(i) and Eighth Sch., for paragraphs 20 and 20A (w.e.f. 21-1-1972).
2. Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 4 (w.e.f. 1-4-1985).
3. Subs. by the State of Mizoram Act, 1986 (34 of 1986), sec. 39, for "Union territory" (w.e.f. 20-2-1987).
4. Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 4 for certain words (w.e.f. 1-4-1985).
5. Subs. by the Government of Meghalaya Notification DCA 31/72/11, dated the 14th June, 1973, Gazette of Meghalaya, Pt. VA, dated 23rd June, 1973, p. 200.
6. Subs. by the Government of Assam Notification T-A D/R/115/74/47, dated 14th October, 1976, for "The Mikir Hills District".

2. Jaintia Hills District.]

3. The Gåro Hills District.

[1][PART IIA

Tripura Tribal Areas District.]

PART III

[2][***]

[3][1. The Chakma District.

[4][2. The Mara District.

3. The Lai District.]]

[5][**20A. Dissolution of the Mizo District Council.**—(1) Notwithstanding anything in this Schedule, the District Council of the Mizo District existing immediately before the prescribed date (hereinafter referred to as the Mizo District Council) shall stand dissolved and cease to exist.

(2) The Administrator of the Union territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely:—

(a) the transfer, in whole or in part, of the assets, rights and liabilities of the Mizo District Council (including the rights and liabilities under any contract made by it) to the Union or to any other authority;

(b) the substitution of the Union or any other authority for the Mizo District Council, or the addition of the Union or any other authority, as a party to any legal proceedings to which the Mizo District Council is a party;

(c) the transfer or re-employment of any employees of the Mizo District Council to or by the Union or any other authority, the terms and conditions of service applicable to such employees after such transfer or re-employment;

(d) the continuance of any laws, made by the Mizo District Council and in force immediately before its dissolution, subject to such adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf, until such laws are altered, repealed or amended by a competent Legislature or other competent authority;

(e) such incidental, consequential and supplementary matters as the Administrator considers necessary.

Explanation.—In this paragraph and in paragraph 20B of this Schedule, the expression 'prescribed date' means the date on which the Legislative Assembly of the Union territory of Mizoram is duly constituted under and in accordance with the provisions of the Government of Union Territories Act, 1963.

---

1. Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 4 (w.e.f. 1-4-1985).
2. The words "The Mizo District" omitted by the Government of Union Territories (Amendment) Act, 1971 (83 of 1971), sec. 13 (w.e.f. 29-4-1972).
3. Ins. by the Mizoram District Councils (Miscellaneous Provisions) Order 1972, published in the Mizoran Gazette, 1972, dated the 5th May, 1972, Vol. 1, Pt. II, p. 17 (w.e.f. 29-4-1972).
4. Subs. by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), sec. 2, for serial numbers 2 and 3 and the entries relating thereto.
5. Subs. by the Government of Union Territories (Amendment) Act, 1971 (83 of 1971), sec. 13, for paragraph 20A (w.e.f. 29-4-1972).

[1]**20B. Autonomous regions in the Union territory of Mizoram to be autonomous districts and transitory provisions consequent thereto.**—(1) Notwithstanding anything in this Schedule,—

(a) every autonomous region existing immediately before the prescribed date in the Union territory of Mizoram shall, on and from that date, be an autonomous district in that Union territory (hereafter referred to as the corresponding new district) and the Administrator thereof may, by one or more orders, direct that such consequential amendments as are necessary to give effect to the provisions of this clause shall be made in paragraph 20 of this Schedule (including Part III of the table appended to that paragraph) and thereupon the said paragraph and the said Part III shall be deemed to have been amended accordingly;

(b) every Regional Council of an autonomous region in the Union territory of Mizoram existing immediately before the prescribed date (hereafter referred to as the existing Regional Council) shall, on and from that date and until a District Council is duly constituted for the corresponding new district, be deemed to be the District Council of that district (hereafter referred to as the corresponding new District Council).

(2) Every member whether elected or nominated of an existing Regional Council shall be deemed to have been elected or, as the case may be, nominated to the corresponding new District Council and shall hold office until a District Council is duly constituted for the corresponding new district under this Schedule.

(3) Until rules are made under sub-paragraph (7) of paragraph 2 and sub-paragraph (4) of paragraph 4 of this Schedule by the corresponding new District Council, the rules

---

1. After paragraph 20B, the following paragraph has been inserted in its application to the State of Assam by the Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), sec. 2, namely:—

"20BA. Exercise of discretionary powers by the Governor in the discharge of his functions.—The Governor in the discharge of his functions under sub-paragraphs (2) and (3) of paragraph 1, sub-paragraphs (1), (6), sub-paragraph (6A) excluding the first two proviso and sub-paragraph (7) of paragraph 2, sub-paragraph (3) of paragraph 3, sub-paragraph (4) of paragraph 4, paragraph 5, sub-paragraph (1) of paragraph 6, sub-paragraph (2) of paragraph 7, sub-paragraph (4) of paragraph 8, sub-paragraph (3) of paragraph 9, sub-paragraph (3) of paragraph 10, sub-paragraph (1) of paragraph 14, sub-paragraph (1) of paragraph 15 and sub-paragraphs (1) and (2) of paragraph 16 of this Schedule, shall, after consulting the Council of Ministers and the North Cachar Hills Autonomous Council or the Karbi Anglong Autonomous Council, as the case may be, take such action as he considers necessary in his discretion."

3. After paragraph 20B, the following paragraph has been inserted in its application to the State of Tripura and Mizoram, by the sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), sec. 2, namely:—

"20BB. Exercise of discretionary powers by the Governor in the discharge of his functions.—The Governor in the discharge of his functions under sub-paragraphs (2) and (3) of paragraph 1, sub-paragraphs (1) and (7) of paragraph 2, sub-paragraph (3) of paragraph 3, sub-paragraph (4) of paragraph 4, paragraph 5, sub-paragraph (1) of paragraph 6, sub-paragraph (2) of paragraph 7, sub-paragraph (3) of paragraph 9, sub-paragraph (1) of paragraph 14, sub-paragraph (1) of paragraph 15 and sub-paragraph (1) and (2) of paragraph 16 of this Schedule, shall, after consulting the Council of Ministers, and if he thinks it necessary, the District Council or the Regional Council concerned, take such action as he considers necessary in his discretion."

made under the said provisions by the existing Regional Council and in force immediately before the prescribed date shall have effect in relation to the corresponding new District Council subject to such adaptations and modifications as may be made therein by the Administrator of the Union territory of Mizoram.

(4) The Administrator of the Union territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely:—

(a) the transfer in whole or in part of the assets, rights and liabilities of the existing Regional Council (including the rights and liabilities under any contract made by it) to the corresponding new District Council;

(b) the substitution of the corresponding new District Council for the existing Regional Council as a party to the legal proceedings to which the existing Regional Council is a party;

(c) the transfer or re-employment of any employees of the existing Regional Council to or by the corresponding new District Council, the terms and conditions of service applicable to such employees after such transfer or re-employment;

(d) the continuance of any laws made by the existing Regional Council and in force immediately before the prescribed date, subject to such adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf until such laws are altered, repealed or amended by a competent Legislature or other competent authority;

(e) such incidental, consequential and supplementary matters as the Administrator considers necessary.

[1][**20C. Interpretation.**—Subject to any provision made in this behalf, the provisions of this Schedule shall, in their application to the Union territory of Mizoram, have effect—

(1) as if references to the Governor and Government of the State were references to the Administrator of the Union territory appointed under article 239, references to State (except in the expression 'Government of the State') were references to the Union territory of Mizoram and references to the State Legislature were references to the Legislative Assembly of the Union territory of Mizoram;

(2) as if—

(a) in sub-paragraph (5) of paragraph 4, the provision for consultation with the Government of the State concerned had been omitted;

(b) in sub-paragraph (2) of paragraph 6, for the words 'to which the executive power of the State extends', the words 'with respect to which the Legislative Assembly of the Union territory of Mizoram has power to make laws' had been substituted;

(c) in paragraph 13, the words and figures 'under article 202' had been omitted.]]

21. Amendment of the Schedule.—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

---

1. Subs. by Government of Union Territories (Amendment) Act, 1971 (83 of 1971), sec. 13 for paragraph 20A (w.e.f. 29-4-1972).

SEVENTH SCHEDULE

(*Article 246*)

List I—Union List

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination of effective demobilisation.

2. Naval, military and air forces; any other armed forces of the Union.

[1][2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.]

3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.

4. Naval, military and air force works.

5. Arms, firearms, ammunition and explosives.

6. Atomic energy and mineral resources necessary for its production.

7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

8. Central Bureau of Intelligence and Investigation.

9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.

10. Foreign affairs; all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.

12. United Nations Organisation.

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

15. War and peace.

16. Foreign jurisdiction.

17. Citizenship, naturalisation and aliens.

18. Extradition.

19. Admission into, and emigration and expulsion from, India; passports and visas.

20. Pilgrimages to places outside India.

21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.

22. Railways.

23. Highways declared by or under law made by Parliament to be national highways.

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57 (w.e.f. 3-1-1977).

24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.

25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.

26. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.

27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation and the constitution and powers of port authorities therein.

28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.

29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.

31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

32. Property of the Union and the revenue therefrom, but as regards property situated in a State [1][***] subject to legislation by the State, save in so far as Parliament by law otherwise provides.

[2][***]

34. Courts of wards for the estates of Rulers of Indian States.

35. Public debt of the Union.

36. Currency, coinage and legal tender; foreign exchange.

37. Foreign loans.

38. Reserve Bank of India.

39. Post Office Savings Bank.

40. Lotteries organised by the Government of India or the Government of a State.

41. Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.

42. Inter-State trade and commerce.

43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

---

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch.
2. Entry 33 omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 26.

45. Banking.

46. Bills of exchange, cheques, promissory notes and other like instruments.

47. Insurance.

48. Stock exchanges and futures markets.

49. Patents, inventions and designs; copyright; trade-marks and merchandise marks.

50. Establishment of standards of weight and measure.

51. Establishment of standards of quality for goods to be exported out of India or transported from one State to another.

52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

53. Regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

55. Regulation of labour and safety in mines and oilfields.

56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

57. Fishing and fisheries beyond territorial waters.

58. Manufacture, supply and distribution of salt by Union agencies, regulation and control of manufacture, supply and distribution of salt by other agencies.

59. Cultivation, manufacture, and sale for export, of opium.

60. Sanctioning of cinematograph films for exhibition.

61. Industrial disputes concerning Union employees.

62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

63. The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University and the [1][Delhi University; the University established in pursuance of article 371E;] any other institution declared by Parliament by law to be an institution of national importance.

64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

---

1. Subs. by the Constitution (Thirty-second Amendment) Act, 1973, sec. 4, for "Delhi University and" (w.e.f. 1-7-1974).

65. Union agencies and institutions for—

(a) professional, vocational or technical training, including the training of police officers; or

(b) the promotion of special studies or research; or

(c) scientific or technical assistance in the investigation or detection of crime.

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

67. Ancient and historical monuments and records, and archaeological sites and remains, [1][declared by or under law made by Parliament] to be of national importance.

68. The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organisations.

69. Census.

70. Union Public Services; All-India Services; Union Public Service Commission.

71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.

72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.

73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.

74. Powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.

75. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General.

76. Audit of the accounts of the Union and of the States.

77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

78. Constitution and Organisation [2][(including vacations)] .of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.

[3][79. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory.]

80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to

---

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 27, for "declared by Parliament by law".
2. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, sec. 12 (with retrospective effect).
3. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for entry 79.

exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

81. Inter-State migration; inter-State quarantine.

82. Taxes on income other than agricultural income.

83. Duties of customs including export duties.

84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption.

(b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

85. Corporation tax.

86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

87. Estate duty in respect of property other than agricultural land.

88. Duties in respect of succession to property other than agricultural land.

89. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.

90. Taxes other than stamp duties on transactions in stock exchanges and futures markets.

91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

92. Taxes on the sale or purchase of newspapers and on advertisements published therein.

[1][92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.]

[2][92B. Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.]

93. Offences against laws with respect to any of the matters in this List.

94. Inquiries, surveys and statistics for the purpose of any of the matters in this List.

95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

96. Fees in respect of any of the matters in this List, but not including fees taken in any court.

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

---

1. Ins. by the Constitution (Sixth Amendment) Act, 1956, sec. 2 (w.e.f. 11-6-1956).

2. Ins. by the Constitution (Forty-sixth Amendment) Act, 1982, sec. 5 (w.e.f. 2-2-1983).

List II—State List

1. Public order (but not including [1][the use of any naval, military or Air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power).

[2][2. Police (including railway and village police) subject to the provisions of entry 2A of List I.]

3. [3][***] Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

6. Public health and sanitation; hospitals and dispensaries.

7. Pilgrimages, other than pilgrimages to places outside India.

8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

9. Relief of the disabled and unemployable.

10. Burials and burial grounds; cremations and cremation grounds.

[4][***]

12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those [5][declared by or under law made by Parliament] to be of national importance.

13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.

16. Pounds and the prevention of cattle trespass.

---

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57, for certain words (w.e.f. 3-1-1977).
2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57, for entry 2 (w.e.f. 3-1-1977).
3. Certain words omitted by the Constitution (Forty-second (Amendment) Act, 1976, sec. 57 (w.e.f. 3-1-1977).
4. Entry 11 omitted by the Constitution (Forty-second Amendment) Act, 1976, sec. 57 (w.e.f. 3-1-1977).
5. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 27, for "declared by Parliament by law".

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

[1][***]

21. Fisheries.

22. Courts of wards subject to the provisions of entry 34 of List I; encumbered and attached estates.

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

24. Industries subject to the provisions of [2][entries 7 and 52] of List I.

25. Gas and gas-works.

26. Trade and commerce within the State subject to the provisions of entry 33 of List III.

27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

28. Markets and fairs.

[3][***]

30. Money-lending and money-lenders; relief of agricultural indebtedness.

31. Inns and inn-keepers.

32. Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities; unincorporated trading, literacy, scientific, religious and other societies and associations; co-operative societies.

33. Theaters and dramatic performances; cinemas subject to the provisions of entry 60 of List 1; sports, entertainments and amusements.

34. Betting and gambling.

35. Works, lands and buildings vested in or in the possession of the State.

[4][***]

37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.

38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.

39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that

1. Entries 19 and 20 omitted by the Constitution (Forty-second Amendment) Act, 1976, sec. 57 (w.e.f. 3-1-1977).
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 28, for "entry 52".
3. Entry 29 omitted by the Constitution (Forty-second Amendment) Act, 1976, sec. 57 (w.e.f. 3-1-1977).
4. Entry 36 omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 26.

Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

40. Salaries and allowances of Ministers for the State.

41. State public services; State Public Service Commission.

42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.

43. Public debt of the State.

44. Treasure trove.

45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

46. Taxes on agricultural income.

47. Duties in respect of succession to agricultural land.

48. Estate duty in respect of agricultural land.

49. Taxes on lands and buildings.

50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

53. Taxes on the consumption or sale of electricity.

[1][54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.]

55. Taxes on advertisements other than advertisements published in the newspapers [2][and advertisements broadcast by radio or television].

56. Taxes on goods and passengers carried by road or on inland waterways.

57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.

58. Taxes on animals and boats.

59. Tolls.

60. Taxes on professions, trades, callings and employments.

61. Captivation taxes.

62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

---

1. Subs. by the Constitution (Sixth Amendment) Act, 1956, sec. 2, for entry 54.

2. Ins. by the Constitution (Forty-Second Amendment) Act, 1976, sec. 57 (w.e.f. 3-1-1977).

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

64. Offences against laws with respect to any of the matters in this List.

65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

List III—Concurrent List

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

3. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.

4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.

5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

6. Transfer of property other than agricultural land; registration of deeds and documents.

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

8. Actionable wrongs.

9. Bankruptcy and insolvency.

10. Trust and Trustees.

11. Administrators-general and official trustees.

[1][11A. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.]

12. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.

13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.

14. Contempt of court, but not including contempt of the Supreme Court.

15. Vagrancy; nomadic and migratory tribes.

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57 (w.e.f. 3-1-1977).

16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

17. Prevention of cruelty to animals.

[1][17A. Forests.

17B. Protection of wild animals and birds.]

18. Adulteration of foodstuffs and other goods.

19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.

20. Economic and social planning.

[1][20A. Population control and family planning.]

21. Commercial and industrial monopolies, combines and trusts.

22. Trade unions; industrial and labour disputes.

23. Social security and social insurance; employment and unemployment.

24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

[2][25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.]

26. Legal, medical and other professions.

27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.

28. Charities and charitable institutions, charitable and religious endowments and religious institutions.

29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.

30. Vital statistics including registration of births and deaths.

31. Ports other than those declared by or under law made by Parliament or existing law to be major ports.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.

[3][33. Trade and commerce in, and the production, supply and distribution of,—

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57 (w.e.f. 3-1-1977).
2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57, for entry 25 (w.e.f. 3-1-1977).
3. Subs. by the Constitution (Third Amendment) Act, 1954, sec. 2, for entry 33.

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute.]

[1][33A. Weights and measures except establishment of standards.]

34. Price control.

35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

36. Factories.

37. Boilers.

38. Electricity.

39. Newspapers, books and printing presses.

40. Archaeological sites and remains other than those [2][declared by or under law made by Parliament] to be of national importance.

41. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.

[3][42. Acquisition and requisitioning of property.]

43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.

44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

45. Inquiries and statistics for the purposes of any of the matters specified in List II or List III.

46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

47. Fees in respect of any of the matters in this List, but not including fees taken in any court.

---

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57 (w.e.f. 3-1-1977).
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 27, for "declared by the Parliament by law".
3. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 26, for entry 42.

EIGHTH SCHEDULE

[Articles 344(1) and 351]

Languages

1. Assamese.
2. Bengali.
3. Gujarati.
4. Hindi.
5. Kannada.
6. Kashmiri.
[1][7. Konkani.]
[2][8.] Malayalam.
[3][9. Manipuri.]
[4][10.] Marathi.
[5][11. Nepali.]
[6][12.] Oriya.
[6][13.] Punjabi.
[6][14.] Sanskrit.
[6][[15.] Sindhi.]
[6][16.] Tamil.
[6][17.] Telugu.
[6][18.] Urdu.

---

1. Ins. by the Constitution (Seventy-first Amendment) Act, 1992, sec. 2(a).
2. Entry 7 renumbered as entry 8 by the Constitution (Seventy-first Amendment) Act, 1992, sec. 2(a).
3. Ins. by the Constitution (Seventy-first Amendment) Act, 1992, sec. 2(b).
4. Entry 8 renumbered as entry 10 by the Constitution (Seventy-first Amendment) Act, 1992, sec. 2(b).
5. Ins. by the Constitution (Seventy-first Amendment) Act, 1992, sec. 2(c).
6. Entries 9 to 15 renumbered as entry 12 to 18 and entry 15 added by the Constitution (Twenty-first Amendment) Act, 1967, sec. 2(c).

[1][*NINTH SCHEDULE*

(*Article 31B*)

1. The Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950).

2 The Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act LXVII of 1948).

3. The Bombay Maleki Tenure Abolition Act, 1949 (Bombay Act LXI of 1949).

4. The Bombay Taluqdari Tenure Abolition Act, 1949 (Bombay Act LXII of 1949).

5. The Panch Mahals, Mehwassi Tenure Abolition Act, 1949 (Bombay Act LXIII of 1949).

6. The Bombay Khoti Abolition Act, 1950 (Bombay Act VI of 1950).

7. The Bombay Paragana and Kulkarni Watan Abolition Act, 1950 (Bombay Act LX of 1950).

8. The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Madhya Pradesh Act 1 of 1951).

9. The Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948).

10. The Madras Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1950 (Madras Act 1 of 1950).

11. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Uttar Pradesh Act 1 of 1951).

12. The Hyderabad (Abolition of Jagirs) Regulation, 1358FC (No. LXIX of 1358, Fasli).

13. The Hyderabad Jagirs (Commutation) Regulation, 1359FC (No. XXV of 1359, Fasli).

[2][14. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950 (Bihar Act XXXVIII of 1950).

15. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U.P. Act XXVI of 1948).

16. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act LX of 1948).

17. Sections 52A to 52G of the Insurance Act, 1938 (Act IV of 1938), as inserted by section 42 of the Insurance (Amendment) Act, 1950 (Act XLVII of 1950).

18. The Railway Companies (Emergency Provisions) Act, 1951 (Act LI of 1951).

19. Chapter IIIA of the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951), as inserted by section 13 of the Industries (Development and Regulation) Amendment Act, 1953 (Act XXVI of 1953).

20. The West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948), as amended by West Bengal Act XXIX of 1951.]

---

1. Added by the Constitution (First Amendment) Act, 1951, sec. 14.
2. Added by the Constitution (Fourth Amendment) Act, 1955, sec. 5.

[1][21. The Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Andhra Pradesh Act X of 1961).]

22. The Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Validation) Act, 1961 (Andhra Pradesh Act XXI of 1961).

23. The Andhra Pradesh (Telangana Area) Ijara and Kowli Land Cancellation of Irregular Pattas and Abolition of Concessional Assessment Act, 1961 (Andhra Pradesh Act XXXVI of 1961).

24. The Assam State Acquisition of Lands belonging to Religious or Charitable Institution of Public Nature Act, 1959 (Assam Act IX of 1961).

25. The Bihar Land Reforms (Amendment) Act, 1953 (Bihar Act XX of 1954).

26. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962), (except section 28 of this Act).

27. The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1954 (Bombay Act 1 of 1955).

28. The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1957 (Bombay Act XVIII of 1958).

29. The Bombay Inams (Kutch Area) Abolition Act, 1958 (Bombay Act XCVIII of 1958).

30. The Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960 (Gujarat Act XVI of 1960).

31. The Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat Act XXVI of 1961).

32. The Sagbara and Meshwassi Estates (Proprietary Rights Abolition, *etc.*) Regulation, 1962 (Gujarat Regulation 1 of 1962).

33. The Gujarat Surviving Alienations Abolition Act, 1963 (Gujarat Act XXXIII of 1963), except in so far as this Act relates to an alienation referred to in sub-clause (d) of clause (3) of section 2 thereof.

34. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Maharashtra Act XXVII of 1961).

35. The Hyderabad Tenancy and Agricultural Lands (Re-enactment, Validation and Further Amendment) Act, 1961 (Maharashtra Act XLV of 1961).

36. The Hyderabad Tenancy and Agricultural Lands Act, 1950 (Hyderabad Act XXI of 1950).

37. The Jenmikaram Payment (Abolition) Act, 1960 (Kerala Act III of 1961).

38. The Kerala Land Tax Act, 1961 (Kerala Act XIII of 1961).

39. The Kerala Land Reforms Act, 1963 (Kerala Act 1 of 1964).

40. The Madhya Pradesh Land Revenue Code, 1959 (Madhya Pradesh Act XX of 1959).

41. The Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (Madhya Pradesh Act XX of 1960).

42. The Madras Cultivating Tenants Protection Act, 1955 (Madras Act XXV of 1955).

---

1. Added by the Constitution (Seventeenth Amendment) Act, 1964, sec. 3.

43. The Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956 (Madras Act XXIV of 1956).

44. The Madras Occupants of Kudiyiruppu (Protection from Eviction) Act, 1961 (Madras Act XXXVIII of 1961).

45. The Madras Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961 (Madras Act LVII of 1961).

46. The Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Madras Act LVIII of 1961).

47. The Mysore Tenancy Act, 1952 (Mysore Act XIII of 1952).

48. The Coorg Tenants Act, 1957 (Mysore Act XIV of 1957).

49. The Mysore Village Offices Abolition Act, 1961 (Mysore Act XIV of 1961).

50. The Hyderabad Tenancy and Agricultural Lands (Validation) Act, 1961 (Mysore Act XXXVI of 1961).

51. The Mysore Land Reforms Act, 1961 (Mysore Act X of 1962).

52. The Orissa Land Reforms Act, 1960 (Orissa Act XVI of 1960).

53. The Orissa Merged Territories (Village Offices Abolition) Act, 1963 (Orissa Act X of 1963).

54. The Punjab Security of Land Tenures Act, 1953 (Punjab Act X of 1953).

55. The Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955).

56. The Rajasthan Zamindari and Biswedari Abolition Act, 1959 (Rajasthan Act VIII of 1959).

57. The Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (Uttar Pradesh Act XVII of 1960).

58. The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (Uttar Pradesh Act I of 1961).

59. The West Bengal Estates Acquisition Act, 1953 (West Bengal Act 1 of 1954).

60. The West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956).

61. The Delhi Land Reforms Act, 1954 (Delhi Act VIII of 1954).

62. The Delhi Land Holdings (Ceiling) Act, 1960 (Central Act 24 of 1960).

63. The Manipur Land Revenue and Land Reforms Act, 1960 (Central Act 33 of 1960).

64. The Tripura Land Revenue and Land Reforms Act, 1960 (Central Act 43 of 1960).

[1][65. The Kerala Land Reforms (Amendment) Act, 1969 (Kerala Act 35 of 1969).

66. The Kerala Land Reforms (Amendment) Act, 1971 (Kerala Act 25 of 1971).]

[2][67. The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Andhra Pradesh Act I of 1973).]

68. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 (Bihar Act I of 1973).

---

1. Ins. by the Constitution (Twenty-ninth Amendment) Act, 1972, sec. 2.
2. Ins. by the Constitution (Thirty-fourth Amendment) Act, 1974, sec. 2.

69. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1973 (Bihar Act IX of 1973).

70. The Bihar Land Reforms (Amendment) Act, 1972 (Bihar Act V of 1972).

71. The Gujarat Agricultural Lands Ceiling (Amendment) Act, 1972 (Gujarat Act 2 of 1974).

72. The Haryana Ceiling on Land Holdings Act, 1972 (Haryana Act 26 of 1972).

73. The Himachal Pradesh Ceiling on Land Holdings Act, 1972 (Himachal Pradesh Act 19 of 1973).

74. The Kerala Land Reforms (Amendment) Act, 1972 (Kerala Act 17 of 1972).

75. The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1972 (Madhya Pradesh Act 12 of 1974).

76. The Madhya Pradesh Ceiling on Agricultural Holdings (Second Amendment) Act, 1972 (Madhya Pradesh Act 13 of 1974).

77. The Mysore Land Reforms (Amendment) Act, 1973 (Karnataka Act I of 1974).

78. The Punjab Land Reforms Act, 1972 (Punjab Act 10 of 1973).

79. The Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (Rajasthan Act II of 1973).

80. The Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (Tamil Nadu Act 24 of 1969).

81. The West Bengal Land Reforms (Amendment) Act, 1972 (West Bengal Act XXII of 1972).

82. The West Bengal Estates Acquisition (Amendment) Act, 1964 (West Bengal Act XXII of 1964).

83. The West Bengal Estates Acquisition (Second Amendment) Act, 1973 (West Bengal Act XXXIII of 1973).

84. The Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1972 (Gujarat Act 5 of 1973).

85. The Orissa Land Reforms (Amendment) Act, 1974 (Orissa Act 9 of 1974).

86. The Tripura Land Revenue and Land Reforms (Second Amendment) Act, 1974 (Tripura Act 7 of 1974).

[1][[2][***]]

88. The Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951).

89. The Requisitioning and Acquisition of Immovable Property Act, 1952 (Central Act 30 of 1952).

90. The Mines and Minerals (Regulations and Development) Act, 1957 (Central Act 67 of 1957).

91. The Monopolies and Restrictive Trade Practices Act, 1969 (Central Act 54 of 1969).

[2][***]

---

1. Ins. by the Constitution (Thirty-ninth Amendment) Act, 1975, sec. 5.
2. Entry 87 and 92 omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 44 (w.e.f. 20-6-1979).

93. The Coking Coal Mines (Emergency Provisions) Act, 1971 (Central Act 64 of 1971).

94. The Coking Coal Mines (Nationalisation) Act, 1972 (Central Act 36 of 1972).

95. The General Insurance Business (Nationalisation) Act, 1972 (Central Act 57 of 1972).

96. The Indian Copper Corporation (Acquisition of Undertaking) Act, 1972 (Central Act 58 of 1972).

97. The Sick Textile Undertakings (Taking Over of Management) Act, 1972 (Central Act 72 of 1972).

98. The Coal Mines (Taking Over of Management) Act, 1973 (Central Act 15 of 1973).

99. The Coal Mines (Nationalisation) Act, 1973 (Central Act 26 of 1973).

100. The Foreign Exchange Regulation Act, 1973 (Central Act 46 of 1973).

101. The Alcock Ashdown Company Limited (Acquisition of Undertakings) Act, 1973 (Central Act 56 of 1973).

102. The Coal Mines (Conservation and Development) Act, 1974 (Central Act 28 of 1974).

103. The Additional Emoluments (Compulsory Deposit) Act, 1974 (Central Act 37 of 1974).

104. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974).

105. The Sick Textile Undertakings (Nationalisation) Act, 1974 (Central Act 57 of 1974).

106. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1964 (Maharashtra Act XVI of 1965).

107. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1965 (Maharashtra Act XXXII of 1965).

108. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1968 (Maharashtra Act XVI of 1968).

109. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Second Amendment) Act, 1968 (Maharashtra Act XXXIII of 1968).

110. The Maharashtra Agricultural Lands (Ceiling on Holdings) Amendment) Act, 1969 (Maharashtra Act XXXVII of 1969).

111. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Second Amendment) Act, 1969 (Maharashtra Act XXXVIII of 1969).

112. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1970 (Maharashtra Act XXVII of 1970.

113. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1972 (Maharashtra Act XIII of 1972).

114. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1973 (Maharashtra Act L of 1973).

115. The Orissa Land Reforms (Amendment) Act, 1965 (Orissa Act 13 of 1965).

116. The Orissa Land Reforms (Amendment) Act, 1966 (Orissa Act 8 of 1967).

117. The Orissa Land Reforms (Amendment) Act, 1967 (Orissa Act 13 of 1967).

118. The Orissa Land Reforms (Amendment) Act, 1969 (Orissa Act 13 of 1969).

119. The Orissa Land Reforms (Amendment) Act, 1970 (Orissa Act 18 of 1970).

120. The Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (Uttar Pradesh Act 18 of 1973).

121. The Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 (Uttar Pradesh Act 2 of 1975).

122. The Tripura Land Revenue and Land Reforms (Third Amendment) Act, 1975 (Tripura Act 3 of 1975).

123. The Dadra and Nagar Haveli Land Reforms Regulation, 1971 (3 of 1971).

124. The Dadra and Nagar Haveli Land Reforms (Amendment) Regulation, 1973 (5 of 1973).

[1][125. Section 66A and Chapter IVA of the Motor Vehicles Act, 1939 (Central Act 4 of 1939).

126. The Essential Commodities Act, 1955 (Central Act 10 of 1955).

127. The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (Central Act 13 of 1976).

128. The Bonded Labour System (Abolition) Act, 1976 (Central Act 19 of 1976).

129. The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976 (Central Act 20 of 1976).

[2][* * *]

131. The Levy Sugar Price Equalisation Fund Act, 1976 (Central Act 31 of 1976).

132. The Urban Land (Ceiling and Regulation) Act, 1976 (Central Act 33 of 1976).

133. The Departmentalisation of Union Accounts (Transfer of Personnel) Act, 1976 (Central Act 59 of 1976).

134. The Assam Fixation of Ceiling on Land Holdings Act, 1956 (Assam Act 1 of 1957).

135. The Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (Bombay Act XCIX of 1958).

136. The Gujarat Private Forests (Acquisition) Act, 1972 (Gujarat Act 14 of 1973).

137. The Haryana Ceiling on Land Holdings (Amendment) Act, 1976 (Haryana Act 17 of 1976).

138. The Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Himachal Pradesh Act 8 of 1974).

139. The Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 (Himachal Pradesh Act 18 of 1974).

140. The Karnataka Land Reforms (Second Amendment and Miscellaneous Provisions) Act, 1974 (Karnataka Act 31 of 1974).

---

1. Ins. by the Constitution (Fortieth Amendment) Act, 1976, sec. 3.
2. Entry 130 omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 44 (w.e.f. 20-6-1979).

141. The Karnataka Land Reforms (Second Amendment) Act, 1976 (Karnataka Act 27 of 1976).

142. The Kerala Prevention of Eviction Act, 1966 (Kerala Act 12 of 1966).

143. The Thiruppuvaram Payment (Abolition) Act, 1969 (Kerala Act 19 of 1969).

144. The Sreepadam Lands Enfranchisement Act, 1969 (Kerala Act 20 of 1969).

145. The Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971 (Kerala Act 20 of 1971).

146. The Kerala Private Forests (Vesting and Assignment) Act, 1971 (Kerala Act 26 of 1971).

147. The Kerala Agricultural Workers Act, 1974 (Kerala Act 18 of 1974).

148. The Kerala Cashew Factories (Acquisition) Act, 1974 (Kerala Act 29 of 1974).

149. The Kerala Chitties Act, 1975 (Kerala Act 23 of 1975).

150. The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (Kerala Act 31 of 1975).

151. The Kerala Land Reforms (Amendment) Act, 1976 (Kerala Act 15 of 1976).

152. The Kanam Tenancy Abolition Act, 1976 (Kerala Act 16 of 1976).

153. The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1974 (Madhya Pradesh Act 20 of 1974).

154. The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1975 (Madhya Pradesh Act 2 of 1976).

155. The West Khandesh Meshwari Estates (Proprietary Rights Abolition, *etc.*) Regulation, 1961 (Maharashtra Regulation 1 of 1962).

156. The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (Maharashtra Act XIV of 1975).

157. The Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Act, 1972 (Maharashtra Act XXI of 1975).

158. The Maharashtra Private Forests (Acquisition) Act, 1975 (Maharashtra Act XXIX of 1975).

159. The Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Act, 1975 (Maharashtra Act XLVII of 1975).

160. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1975 (Maharashtra Act II of 1976).

161. The Orissa Estates Abolition Act, 1951 (Orissa Act I of 1952).

162. The Rajasthan Colonisation Act, 1954 (Rajasthan Act XXVII of 1954).

163. The Rajasthan Land Reforms and Acquisition of Landowners' Estates Act, 1963 (Rajasthan Act 11 of 1964).

164. The Rajasthan Imposition of Ceiling on Agricultural Holdings (Amendment) Act, 1976 (Rajasthan Act 8 of 1976).

165. The Rajasthan Tenancy (Amendment) Act, 1976 (Rajasthan Act 12 of 1976).

166. The Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act, 1970 (Tamil Nadu Act 17 of 1970).

167. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1971 (Tamil Nadu Act 41 of 1971).

168. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1972 (Tamil Nadu Act 10 of 1972).

169. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1972 (Tamil Nadu Act 20 of 1972).

170. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Third Amendment Act, 1972 (Tamil Nadu Act 37 of 1972).

171. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Fourth Amendment Act, 1972 (Tamil Nadu Act 39 of 1972).

172. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Sixth Amendment Act, 1972, (Tamil Nadu Act 7 of 1974).

173. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Fifth Amendment Act, 1972 (Tamil Nadu Act 10 of 1974).

174. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1974 (Tamil Nadu Act 15 of 1974).

175. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Third Amendment Act, 1974 (Tamil Nadu Act 30 of 1974).

176. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1974 (Tamil Nadu Act 32 of 1974).

177. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1975 (Tamil Nadu Act 11 of 1975).

178. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1975 (Tamil Nadu Act 21 of 1975).

179. Amendments made to the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Uttar Pradesh Act I of 1951) by the Uttar Pradesh Land Laws (Amendment) Act, 1971 (Uttar Pradesh Act 21 of 1971) and the Uttar Pradesh Land Laws (Amendment) Act, 1974 (Uttar Pradesh Act 34 of 1974).

180. The Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 (Uttar Pradesh Act 20 of 1976).

181. The West Bengal Land Reforms (Second Amendment) Act, 1972 (West Bengal Act XXVIII of 1972).

182. The West Bengal Restoration of Alienated Land Act, 1973 (West Bengal Act XXIII of 1973).

183. The West Bengal Land Reforms (Amendment) Act, 1974 (West Bengal Act XXXIII of 1974).

184. The West Bengal Land Reforms (Amendment) Act, 1975 (West Bengal Act XXIII of 1975).

185. The West Bengal Land Reforms (Amendment) Act, 1976 (West Bengal Act XII of 1976).

186. The Delhi Land Holdings (Ceiling) Amendment Act, 1976 (Central Act 15 of 1976).

187. The Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Goa, Daman and Diu Act I of 1976).

188. The Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 (Pondicherry Act 9 of 1974).]

[1][189. The Assam (Temporarily Settled Areas) Tenancy Act, 1971 (Assam Act XXIII of 1971).

190. The Assam (Temporarily Settled Areas) Tenancy (Amendment) Act, 1974 (Assam Act XVIII of 1974).

191. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Amending Act, 1974 (Bihar Act 31 of 1975).

192. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1976 (Bihar Act 22 of 1976).

193. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1978 (Bihar Act VII of 1978).

194. The Land Acquisition (Bihar Amendment) Act, 1979 (Bihar Act 2 of 1980).

195. The Haryana Ceiling on Land Holdings (Amendment) Act, 1977 (Haryana Act 14 of 1977).

196. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1978 (Tamil Nadu Act 25 of 1978).

197. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1979 (Tamil Nadu Act 11 of 1979).

198. The Uttar Pradesh Zamindari Abolition Laws (Amendment) Act, 1978 (Uttar Pradesh Act 15 of 1978).

199. The West Bengal Restoration of Alienated Land (Amendment) Act, 1978 (West Bengal Act XXIV of 1978).

200. The West Bengal Restoration of Alienated Land (Amendment) Act, 1980 (West Bengal Act LVI of 1980).

201. The Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Goa, Daman and Diu Act 7 of 1964).

202. The Goa, Daman and Diu Agricultural Tenancy (Fifth Amendment) Act, 1976 (Goa, Daman and Diu Act 17 of 1976).

[2][203. The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Andhra Pradesh Regulation I of 1959)

204. The Andhra Pradesh Scheduled Areas Laws (Extension and Amendment) Regulation, 1963 (Andhra Pradesh Regulation 2 of 1963).

205. The Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1970 (Andhra Pradesh Regulation 1 of 1970).

206. The Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1971 (Andhra Pradesh Regulation 1 of 1971).

---

1. Ins. by the Constitution (Forty-seventh Amendment) Act, 1984, sec. 2 (w.e.f. 26-8-1984).
2. Entries from 203 to 257 ins. by the Constitution (Sixty-sixth Amendment) Act, 1990, sec. 2 (w.e.f. 7-6-1990).

207. The Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1978 (Andhra Pradesh Regulation 1 of 1978).

208. The Bihar Tenancy Act, 1885 (Bihar Act 8 of 1885).

209. The Chhota Nagpur Tenancy Act, 1908 (Bengal Act 6 of 1908) (Chapter VIII—sections 46, 47, 48, 48A and 49; Chapter X—sections 71, 71A and 71B; and Chapter XVIII—sections 240, 241 and 242).

210. The Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act 14 of 1949) except section 53.

211. The Bihar Scheduled Areas Regulation, 1969 (Bihar Regulation 1 of 1969).

212. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 (Bihar Act 55 of 1982).

213. The Gujarat Devasthan Inams Abolition Act, 1969 (Gujarat Act 16 of 1969).

214. The Gujarat Tenancy Laws (Amendment) Act, 1976 (Gujarat Act 37 of 1976).

215. The Gujarat Agricultural Lands Ceiling (Amendment) Act, 1976 (President's Act 43 of 1976).

216. The Gujarat Devasthan Inams Abolition (Amendment) Act, 1977 (Gujarat Act 27 of 1977).

217. The Gujarat Tenancy Laws (Amendment) Act, 1977 (Gujarat Act 30 of 1977).

218. The Bombay Land Revenue (Gujarat Second Amendment) Act, 1980 (Gujarat Act 37 of 1980).

219. The Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act, 1982 (Gujarat Act 8 of 1982).

220. The Himachal Pradesh Transfer of Land (Regulation) Act, 1968 (Himachal Pradesh Act 15 of 1969).

221. The Himachal Pradesh Transfer of Land (Regulation) (Amendment) Act, 1986 (Himachal Pradesh Act 16 of 1986).

222. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of certain Lands) Act, 1978 (Karnataka Act 2 of 1979).

223. The Kerala Land Reforms (Amendment) Act, 1978 (Kerala Act 13 of 1978)

224. The Kerala Land Reforms (Amendment) Act, 1981 (Kerala Act 19 of 1981).

225. The Madhya Pradesh Land Revenue Code (Third Amendment) Act, 1976 (Madhya Pradesh Act 61 of 1976).

226. The Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (Madhya Pradesh Act 15 of 1980).

227. The Madhya Pradesh Akrishik Jot Uchachatam Seema Adhiniyam, 1981 (Madhya Pradesh Act 11 of 1981).

228. The Madhya Pradesh Ceiling on Agricultural Holdings (Second Amendment) Act, 1976 (Madhya Pradesh Act I of 1984).

229. The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1984 (Madhya Pradesh Act 14 of 1984).

230. The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1989 (Madhya Pradesh Act 8 of 1989).

231. The Maharashtra Land Revenue Code, 1966 (Maharashtra Act 41 of 1966), sections 36, 36A and 36B.

232. The Maharashtra Land Revenue Code and the Maharashtra Restoration of Lands to Scheduled Tribes (Second Amendment) Act, 1976 (Maharashtra Act 30 of 1977).

233. The Maharashtra Abolition of Subsisting Proprietary Rights to Mines and Minerals in certain Lands Act, 1985 (Maharashtra Act 16 of 1985).

234. The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 (Orissa Regulation 2 of 1956).

235. The Orissa Land Reforms (Second Amendment) Act, 1975 (Orissa Act 29 of 1976).

236. The Orissa Land Reforms (Amendment) Act, 1976 (Orissa Act 30 of 1976).

237. The Orissa Land Reforms (Second Amendment) Act, 1976 (Orissa Act 44 of 1976).

238. The Rajasthan Colonisation (Amendment) Act, 1984 (Rajasthan Act 12 of 1984).

239. The Rajasthan Tenancy (Amendment) Act, 1984 (Rajasthan Act 13 of 1984).

240. The Rajasthan Tenancy (Amendment) Act, 1987 (Rajasthan Act 21 of 1987).

241. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1979 (Tamil Nadu Act 8 of 1980).

242. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1980 (Tamil Nadu Act 21 of 1980).

243. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1981 (Tamil Nadu Act 59 of 1981).

244. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1983 (Tamil Nadu Act 2 of 1984).

245. The Uttar Pradesh Land Laws (Amendment) Act, 1982 (Uttar Pradesh Act 20 of 1982).

246. The West Bengal Land Reforms (Amendment) Act, 1965 (West Bengal Act 18 of 1965).

247. The West Bengal Land Reforms (Amendment) Act, 1966 (West Bengal Act 11 of 1966).

248. The West Bengal Land Reforms (Second Amendment) Act, 1969 (West Bengal Act 23 of 1969).

249. The West Bengal Estate Acquisition (Amendment) Act, 1977 (West Bengal Act 36 of 1977).

250. The West Bengal Land Holding Revenue Act, 1979 (West Bengal Act 44 of 1979).

251. The West Bengal Land Reforms (Amendment) Act, 1980 (West Bengal Act 41 of 1980).

252. The West Bengal Land Holding Revenue (Amendment) Act, 1981 (West Bengal Act 33 of 1981).

253. The Calcutta Thikka Tenancy (Acquisition and Regulation) Act, 1981 (West Bengal Act 37 of 1981).

254. The West Bengal Land Holding Revenue (Amendment) Act, 1982 (West Bengal Act 23 of 1982).

255. The Calcutta Thikka Tenancy (Acquisition and Regulation) (Amendment) Act, 1984 (West Bengal Act 41 of 1984).

256. The Mahe Land Reforms Act, 1968 (Pondicherry Act 1 of 1968).

257. The Mahe Land Reforms (Amendment) Act, 1980 (Pondicherry Act 1 of 1981).]

[1][257A. The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the Services under the State) Act 1993 (Tamil Nadu Act 45 of 1994).]

[2][258. The Bihar Privileged persons Homestead Tenancy Act, 1947 (Bihar Act 4 of 1948).

259. The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act 22 of 1956).

260. The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1970 (Bihar Act 7 of 1970).

261. The Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1970 (Bihar Act 9 of 1970).

262. The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1973 (Bihar Act 27 of 1975).

263. The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1981 (Bihar Act 35 of 1982).

264. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1987 (Bihar Act 21 of 1987).

265. The Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1989 (Bihar Act 11 of 1989).

266. The Bihar Land Reforms (Amendment) Act, 1989 (Bihar Act 11 of 1990).

267. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1984 (Karnataka Act 3 of 1984).

268. The Kerala land Reforms (Amendment) Act, 1989 (Kerala Act 16 of 1989).

269. The Kerala land Reforms (Second Amendment) Act, 1989 (Kerala Act, 1989 (Kerala Act 2 of 1990).

270. The Orissa Land Reforms (Amendment Act, 1989 (Orissa Act 9 of 1990).

271. The Rajasthan Tenancy (Amendment) Act, 1979 (Rajasthan Act 16 of 1979).

272. The Rajasthan Colonisation (Amendment) Act, 1987 (Rajasthan Act 2 of 1987).

273. The Rajasthan Colonisation (Amendment) Act, 1989 (Rajasthan Act 12 of 1989).

274. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1983 (Tamil Nadu Act 3 of 1984).

275. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1986 (Tamil Nadu Act 57 of 1986).

---

1. Ins. by the Constitution (Seventy-sixth Amendment) Act, 1994.
2. Ins. by the Constitution (Seventy-eighth Amendment) Act, 1995.

276. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1987 (Tamil Nadu Act 4 of 1988).

277. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1989 (Tamil Nadu Act 30 of 1989).

278. The West Bengal Land Reforms (Amendment) Act, 1981 (West Bengal Act 50 of 1981).

279. The West Bengal Land Reforms (Amendment) Act, 1986 (West Bengal Act 5 of 1986).

280 The West Bengal Land Reforms (Second Amendment) Act, 1986 (West Bengal Act 19 of 1986).

281. The West Bengal Land Reforms (Third Amendment) Act, 1981 (West Bengal Act 35 of 1986).

282. The West Bengal Land Reforms (Amendment) Act, 1989 (West Bengal Act 23 of 1989).

283. The West Bengal Land Reforms (Amendment) Act, 1990 (West Bengal Act 24 of 1990).

284. The West Bengal Land Reforms (Tribunal Act, 1991 (West Bengal Act 12 of 1991).

Explanation.—Any acquisition made under the Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955), in contravention of the second proviso to clause (1) of article 31 A shall, to the extent of the contravention, be void.]

[1][*TENTH SCHEDULE*

[Articles 102(2) and 191(2)]

Provisions as to disqualification on ground of defection

1. Interpretation.—In this Schedule, unless the context otherwise requires,—

(a) 'House' means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

(b) 'legislature party', in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or, as the case may be, paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

(c) 'original political party', in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2;

(d) 'paragraph' means a paragraph of this Schedule.

2. Disqualification on ground of defection.—(1) Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily gives up his membership of such political party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation.—For the purposes of this sub-paragraph,—

(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

(b) a nominated member of a House shall,—

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

---

1. Added by the Constitution (Fifty-second Amendment) Act, 1985, sec. 6 (w.e.f. 1-3-1985).

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,—

(i) where he was a member of political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;

(ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

3. Disqualification on ground of defection not to apply in case of split.—Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one third of the members of such legislature party,—

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground—

(i) that he has voluntarily given up his membership of his original political party; or

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph.

4. Disqualification on ground of defection not to apply in case of merger.—(1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party—

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group,

and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

5. Exemption.—Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule,—

(a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or

(b) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

6. Decision on questions as to disqualification on ground of defection.—(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212.

7. Bar of jurisdiction of courts.—Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

8. Rules.—(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for—

(a) the maintenance of registers or other records as to the political parties if any, to which different members of the House belong;

(b) the report which the leader of a legislature party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in clause (b) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

(c) the reports which a political party shall furnish with regard to admission to such political party of any members of the House and the officer of the House to whom such reports shall be furnished; and

(d) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

(2) The rules made by the Chairman or the Speaker of a House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(3) The Chairman or the Speaker of a House may, without prejudice to the provisions of article 105 or, as the case may be, article 194, and to any other power which he may have under this Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.]

[1][*ELEVENTH SCHEDULE*

(*Article 243G*)

1. Agriculture, including agricultural extension.

2. Land improvement, implementation of land reforms, land consolidation and soil conservation.

3. Minor irrigation, water management and watershed development.

4. Animal husbandry, dairying and poultry.

5. Fisheries.

6. Social forestry and farm forestry.

7. Minor forest produce.

8. Small scale industries, including food processing industries.

9. Khadi, village and cottage industries.

10. Rural housing.

11. Drinking water.

12. Fuel and fodder.

13. Roads, culverts, bridges, ferries, waterways and other means of communication.

14. Rural electrification, including distribution of electricity.

15. Non-conventional energy sources.

16. Poverty alleviation programme.

17. Education, including primary and secondary schools.

18. Technical training and vocational education.

19. Adult and non-formal education.

20. Libraries.

21. Cultural activities.

22. Markets and fairs.

23. Health and sanitation, including hospitals, primary health centres and dispensaries.

24. Family welfare.

25. Women and child development.

26. Social welfare, including welfare of the handicapped and mentally retarded.

27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.

28. Public distribution system.

29. Maintenance of community assets.]

---

1. Added by the Constitution (Seventy-third Amendment) Act, 1992, sec. 4.

[1][*TWELFTH SCHEDULE*

(*Article 243W*)

1. Urban planning including town planning.

2. Regulation of land-use and construction of buildings.

3. Planning for economic and social development.

4. Roads and bridges.

5. Water supply for domestic, industrial and, commercial purposes.

6. Public health, sanitation conservancy and solid waste management.

7. Fire services.

8. Urban forestry protection of the environment and promotion of ecological aspects.

9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

10. Slum improvement and upgradation.

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, play-grounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.

15. Cattle ponds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.]

---

1. Added by the Constitution (Seventy-fourth Amendment) Act, 1992, sec. 4.

SUBJECT INDEX

A

Acquired Territory, 7
  law applicable, 7
Acquisition of Territory, 6, 7
Act of State, 16
Administrative Tribunal, 78, 276
  interference by, 277
Administration and control of Scheduled Areas and Scheduled Tribes, 342
Admission in colleges, 22
Advocate General for State, 148
Affairs of religion, 67
AIDS and Employment, 48
All India Service, 26, 269
Allocation of seats in the Council of State, 340
Amendment Act and relevant ruling, 15
Amendment Bill (45th), 5
American Constitution, 17
Ananda Marg, 65
Ancillary Power of Supreme Court, 138
Andhra Pradesh, 315
  establishment of Central University, 318
  special provision for, 315
Anglo Indian, 283
  provision for education grants for, 286
  provision of certain services for, 285
  representation in the House of People, 283
  representation in the Legislative Assembly, 284
Annual Financial Statement, 122, 162
Appellate Jurisdiction of Supreme Court, 131
Appointment of commission to investigate the conditions of backward classes, 288
Appropriation Bill, 123, 163
Arbitrary Action and discretion, 19
Areawise reservation, 29
Armed Forces (Special Powers) Act, 1958, 21
Arrest
  information about ground of, 60
  meaning of, 60
Arunachal Pradesh, 321
  special provision for, 321
Assam, 315
  special provision for, 315
Assent to Bill, 122, 161
Assault on child, 51
Atomic energy, 50
Audit reports, 144
Australian Model, 3
Authoritative text in Hindi language, 326
Autonomous districts and autonomous regions, 345

B

Backward Areas, 20
Backward class, 28
Ban on slaughter, 44
Bar to interference by courts in electoral matter, 282
Bar to interference by courts in disputes arising out of certain treaties, agreements, 303
Basu, 5
Beauty Contests, 48
Bill
  reference of, 8
Bill reserved for consideration, 16
Bombay Stamp Act, 227
Borrowing, 245
  by Government of India, 245
  by States, 245
Burden of proof, 36
Business aspects of media, 38
Business with Government, 43

C

Cabinet Government, 107
Cabinet Secrecy, 108
Calculation of net proceeds, 241

Certificates for appeals to Supreme Court, 133
Certiorari, 79
Chairman and Deputy Chairman of Legislative Council, 113, 115
Chairman, 113
not to preside, 113, 155
of the Legislative Council, 155
salaries and other allowances, 115
vacation and resignation, 155
Change of name, 21
Child Labour, 90
Child offender, 50
Child Prostitution, 80
Children Aid Society, 12
Citizenship Act, 1955, 10
sec. 9(2), 10
Citizenship, 8, 20
continuance of the right of, 10
every person, 8
Indian origin residing outside India, 9
migrated to India from Pakistan, 9
migrated to Pakistan, 9
of domicile, 8
Parliament regulate the right of, 10
voluntarily acquiring citizenship of foreign state, 9
Civil and Judicial authorities to act in aid of Supreme Court, 141
Claims of Scheduled Castes and Scheduled Tribes to services and posts, 285
Closure of Industry, 80
Co-operative Societies Act, *1912*, 13
Code of Conduct, 117
Code of Civil Procedure, *1908*, 18
Commencement of Constitution, 8
Commission and Committee of Parliament on official language, 291
Common Law offences, 45
Composition of Legislative Assembly, 150
Composition of Legislative Council, 151
Comptroller and Auditor General of India, 143
audit report of, 144
duties and powers of, 144
forms of accounts, 144
Concurrent list, 371
Conduct of Business of Government of a State, 148
Conduct of Business, 115
oath or affirmation of member, 115
voting in houses, 115
Conduct of Government business, 109
Confidentiality of Cabinet decision, 108
Congress party, 5
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, *1974*, 62, 63
Consolidated funds and public accounts of India and States, 235
Constitution (Forty-second Amendment) Act, *1976*, 15
Constitution (Seventy-Seventh Amendment) Act, *1995*, 31
Constitution (Twenty-fifth Amendment) Act, *1971*, 75
Constitution of District Council and Regional Council, 346
Constitutional Assembly debate, 4
Consumer Disputes Redressal Committee, 178
Contempt of court, 39
Contingency fund, 236
Contracts, 22, 248
Control of Union over States, 232
Control of union over administration of scheduled areas and welfare of scheduled tribes, 287
Cooperative Societies, 178, 225
Cooperative Societies Act, *1912*, 13, 42,
Corporations as citizens, 33
Councils of Minister to aid and advise President, 107
Courts not to enquire into proceeding of legislature, 166
Courts not to inquire into proceeding of Parliament, 126

Cruel Punishment, 52
Custodial Death, 48
Custody of consolidated Funds, contingency funds and money credited to Public Accounts, 242
Custody of suitor deposits and moneys received by public servants and courts, 242

D

Death in custody, 79
Death Sentence, 52
Decision on questions as to disqualification of members, 158
Delhi Development Act, *1957*, 22
Delhi Development Authority, 22
Deputy Chairman, 113
of the Council, 13
of the legislative council, 115
powers of 113, 155
salaries of, 115
vacation and resignation of and removal of, 113, 115
Deputy Speaker, 114
not to preside, 114
power of, 114, 154
salaries and allowances of, 115, 156
to house of people, 114
vacation and resignation and removal of, 114
Dicey, 17
Directive for development of Hindi language, 293
Directive Principles of State Policy, 3, 88
application of the principles of, 88
definitions, 88
duty of State to raise level of nutrition, 94
duty of state to raise standard of living to improve public health, 94
free and compulsory education for children, 94
free legal aid [Art. 39A], 91
human conditions of work, 92
international peace and security, 95
living wages, 92
maternity benefits reliefs, 92
organisation for village Panchayat, 92
organisation of agriculture and animal husbandry [Art. 48], 94
participation of workers in management of industries, 92
policy to be followed by state, 89
promotion of educational and economic interests of SC/ST/OBCs, 94
protection and improvement of environment, 94
protection of monuments, 95
protection of places and objects of national importance, 95
right to education, 92
right to public assistance, 92
right to work, 92
safeguarding of forests and wildlife, 92
separation of judiciary from executive, 95
social order for the promotion of welfare of people, 89
uniform civil code, 92
Discrimination, 30
Disqualification for membership, 116, 157
Disqualification of members, 115
Dissolution of district or regional council, 356
Dissolution of Muslim Marriage Act, 93
District and regional funds, 350
District council, 346
Constitution of, 346
powers of, 347, 350
Doctrine of pith and substance, 224, 227
Double jeopardy, 45
Drugs and Cosmetics Act, 1940, 53
Duration of Houses of Parliament, 111
Duties levied by union collected by state, 236
Duties of Chief Minister as respect the furnishing of information to Governor, 149
Duties of Prime Minister, 109

Duty of state
to raise level of nutrition, 94
to raise standard of living to improve pubic health, 94

E

Education, 23
Educational standard, 71
Effect of 42nd and 44th Amendment Acts, 119
Election Commission, 280
superintendence, direction and control of election to be vested in, 280
Election, 280
ineligibility on ground of religion, race caste or sex, 281
to House of People and to legislative assemblies, 281
Election of President or Vice President, 102
Eligibility for re-election, 99
Enforcement of decrees and orders of Supreme Court, 140
Enlargement of jurisdiction of Supreme Court, 137
Environment, precautionary principles, 53
Environment, Hazardous chemicals, 54
Equal pay, 90
Equal pay for equal work, 91
Equals and Unequals, 19
Essential commodities, 226
Establishment of a common High Court for two or more States, 201
Establishment of Central University in Andhra Pradesh, 318
Ex-officio chairman of council of State, 101
Executive Action 19
Executive, power of, 97, 98, 106, 144
states, 145
Exemption from tax, 26
Exemption from taxation by states, 244
Exemption from taxes on Electricity, 243
Exemption of property and income, 244
Exemption of property of Union from tax exemption, 242
Existing States, 7
boundaries or names, 7
Expenditure defrayable by the Union or a State out of its revenue, 241
Extension of jurisdiction of High Courts to union territories, 201
Extent of executive power of state, 146
Extradition Treaty, 95

F

Facilities for instruction in mother tongue at primary stage, 293
False news items about Judges, 40
Financial assistance, 21
Finance Commission, 241
recommendation of, 241
Finance, interpretation, 235
Financial Bills, 164
special provision to, 164
Financial Business, 165
regulation by law of procedure regarding, 165
Financial Emergency, 301
provision as to, 301
Flexibility, 19
Foreign Exchange Regulation Act, *1973*, 40
Form of oath or affirmation, 338
Freedom
of assembly, 40
of associations, 40
of expression, 40
of profession, 42
of residence, 42
of speech, 118
of trade commerce and intercourse, 250
Fundamental aspects, 2
Fundamental Duties, 96
Fundamental Law, 4
Fundamental Rights, 10
abolition of titles, 33
abolition of untouchability, 33

agency outside India, 12
authorities held to be state, 12
basic features, 15
co-operative societies, 13
definition of, 10
equality of opportunity in matters of public employment, 29
freedom of attendance at religious instruction or religious worship in certain educational institution, 68
freedom of conscience and free profession, practice and propagation of religion, 64
freedom of payment of taxes for promotion of any particular religion, 68
freedom to manage religious affairs, 66
laws inconsistent with or in derogation, 13
local authorities, 11
other authorities, 11
power of Parliament to modify the rights, 85
Private body, 13
prohibition of discrimination on ground of religion, race, caste, sex or place of birth 26
prohibition of employment of children in factories, 64
prohibition of traffic in human beings and forced labour, 63
protection against arrest and detention, 59
protection of certain rights regarding freedom of speech, 34
protection of conviction for offences, 44
protection of interests of minorities, 68
protection of life and personal liberty, 47
remedies for enforcement of rights, 77
restriction on rights, while martial law is in force, 87
right of equality before law, 17
right of minorities to establish and administer educational institution, 69
right to shelter, 13
saving of laws giving effect to certain directive principles, 76
saving of laws providing for acquisition of estates, 74
state action, 11
validation of certain Acts and regulation, 76

G

Government of India Act, *1935*, 3, 9
Governors of States, 144
appointment of, 145
conditions of office of, 145
council of minister to aid and advise to, 147
functions to be discharged in certain contingencies by, 146
oath or affirmation of, 145
other provision as to ministers, 148
power to grant, pardon and to suspend, remit or commute sentence by, 146
qualification for appointment of, 145
term of office of, 145
Goa, 321
special provision for, 321
Grants-in-aid, 20
Government Department, 21
public sector company, 21
Government advertisement, 38
Grants in lieu of export duty on jute and jute products, 238
Grants from the union to certain states, 239

H

Habeas Corpus, 182
Handcuffing, 54
High Courts, 168
application of certain provisions relating to Supreme Court to, 170
appointment and conditions of the office of judge of, 169
appointment of acting chief justice to, 171
appointment of additional and acting judge to, 171
appointment of retired judges to, 171
constitution of, 168
establishment of a common High Court for two or more States, 201

extention of jurisdiction to union territories, 201
jurisdiction of, 172
language of, 292
oath or affirmation of judges of, 170
officers, servants, the expenses of, 200
power of superintendence, 198
power of to issue certain writs, 226
restrictions on practice of permanent judges of, 170
salaries of judges of, 170
to be court of record, 168
transfer of a judge from, 170
transfer of certain cases to, 200
Hindi Language, 293
directive for development of, 293
Hindu Marriage Act, *1955*, 93
Hindu Succession Act, *1956*, 93
House of Legislature
power, privileges of the, 159
House of the People, 114
Speaker and Deputy Speaker, 114
Houses of Parliament, 118
power, privileges of, 118

I

Illegal detention, 51
Income-tax Act, *1961*, 25
Indian Divorce Act, *1869*, 93
Indian National Congress, 17
Indian Secularism, 1
Indian States, 304
recognition granted to rulers of, 304
Infringement of fundamental rights, 82
Insane person, 54
International Covenant on civil and political rights, 16
International peace and security, 95
Interpretation by preamble, 1
Irish Constitution, 52

J

Jammu and Kashmir, 310
temporary power with respect to, 310
Joint sitting of both Houses, 120
Judges
appointment of High Courts', 169, 171
appointment of Supreme Court's, 128, 129
provision as to Federal Courts', 323
provision as to Supreme Court's 334
provision as to High Courts', 324, 334
salaries of High Courts', 170
salaries of Supreme Court's, 129
Judicial officers, 37
Jurisdictional limitations, 187

K

Karnataka Civil Services (Conduct) Rules, 37

L

Land reform legislation, 75
Language of the Supreme Court and High Court for Acts and bills, 292
Language to be used in Legislature, 165
Language to be used in representation for redress of grievance, 293
Languages, 374
Law applicable to scheduled areas, 343
Law declared by Supreme Court to be binding on courts, 138
Legislative assembly, 151
composition of, 151
Deputy Speaker & Speaker of, 154
Legislative council, 151
Chairman and Vice Chairman of, 155
composition of, 151
restriction on powers of, 160
Legislative powers
of Governors to promulgate ordinances during recess of legislature, 167
of President, 126
ordinances during recess of legislature, 167

proclamation issued under Art. *356*, 298
Legislature
power of a state to make provision regarding election to, 282
power of parliament to make provision regarding elections to, 281
Legislature of State, 150
abolition and creation, 150
constitution of, 150
Licence and leases, 352
Licence and permits, 43
Locus standi, 84
Linguistic minorities, 293
special officer for, 293

M

Madhya Pradesh Government Rules, 22, 23
Maharashtra, 312
special provision for, 312
Major ports and aerodromes, 304
special provision as to, 304
Management of Industries, 92
participation of workers in, 92
Mandamus, 80, 185
Manipur, 315
special provision, 315
Material Date, 117
Maternity reliefs, 92
Medical Colleges, 29, 31
reservation in, 29
Medical, 55
aid in Government Hospital, 55
confidentiality, 55
Member of Parliament
disqualification of, 115-117
penalty for sitting and voting before making oath or affirmation, 118
vacation of seats, 115
Members
oath and affirmation, 156
salaries and allowances of, 120
Membership, 112
disqualification of, 116
qualification for Parliament, 112, 152, 158
Mines, 226
Minorities, 69, 70
right to establish and administer to educational institution, 69
Mizoram, 320
special provision, 320
Money Bills
definition of, 121, 161
special procedure in respect of, 121, 160
Money-lending and trading by non-tribals, 352
Municipalities, 214
application to union territories, 218
audit of accounts of, 218
bar to interference by courts in electoral matters, 220
committee for district planning, 218
committee for metropolitan planning, 219
composition of, 214
constitution and composition of ward committees, 215
constitution of, 214
continuance of existing laws, 220
definition of, 214
disqualification for membership of, 216
duration of, 216
election to, 218
finance commission for, 217
part not to apply in certain cases, 218
power to impose taxes by, 217
power, authority and responsibility of, 217
reservation of seats, 215

N

Nagaland, 312
special provision with respect to state of, 312
National awards, 33
New Commonwealth, 105

New States, 7
admission or establishment, 7
alteration of area, 7
formation of, 7

O

Oath or affirmation by members, 156
Obligation of states and the Union, 22
adjustment in respect of certain expenses and pensions, 244
annual payment to certain Devaswam funds, 245
appointment of authority for carrying and the purpose of articles 301 to 304, 253
consolidated funds and public accounts of India and of the State, 235
contingency funds, 236
contracts, 248
control of the union over states, 232
custody of consolidated funds, contingency funds and money credited to public accounts, 242
custody of suitor deposits and moneys received by public servants and courts, 242
disputes relating to water of interstate rivers and valley, 233
duties levied by union by collected by state, 236
exemptions from taxation by states regarding water or electricity in certain cases, 244
finance, interpretation, 235
freedom of trade and commerce and intercourse, 250
grants in lieu of export duty on jute and jute products, 238
jurisdiction of the Union in relation to territories outside India, 233
persons not to deprived of property, 250
power of Parliament to impose restriction on trade, commerce and intercourse, 251
power of the state to entrust functions to Union, 233
power of union to confer powers on states in certain cases, 233
power to carry trade, 247
prior recommendation of President, 239
property acquiring by escheat or lapse or as *bona vacantia*, 246
property, contracts, rights, liabilities, obligation and suits, 246
provision with respect on interstate council, 234
public acts records and judicial proceedings, 233
restriction on trade, commerce and intercourse among states, 251
restrictions as to imposition of tax on the state or purchase of goods, 243
restrictions on the legislative powers of the Union and of the states regarding trade and commerce, 251
right to property, 250
saving of laws providing for state monopolies, 252
succession to property, 246
suits and proceedings, 249
surcharge on certain duties, 238
tax levied and collected by Union but assigned to states, 236
tax levied and collected by union and distributed between union and state, 236, 272
taxes not to be imposed save by authorities of law, 253
taxes on profession, trade, callings and employment, 240
trade, commerce and intercourse with territory of India, 250
Office of profit, 117
Official language, 290
commission and committees of Parliament on, 291
of the Supreme Court and High Court for Acts and Bills, 292
of the union, 290

P

Panchayats, 20, 208
application to union territories, 212
audit of accounts of, 212
bar to interfere by courts in electoral matters, 213
composition of, 208
constitution of, 208
constitution of finance commission to review financial position, 211
continuance of existing law and, 213
definition of, 208
disqualification for membership of, 210
duration of, 210
election of, 212
powers to impose taxes and funds by, 211
powers, authority and responsibility of, 211
reservation of seats for, 209
Parens Patna, 81
Parents patrial, doctrine of, 5
Parliament
composition of the council of states, 110
composition of House of People, 110
Constitution of, 110
duration of House of, 111
general procedure, 125
court not enquire into proceedings of Parliament, 126
language, 125
regulation by law of procedure in relation to financial business, 125
restriction on discussion in Parliament, 126
rules of procedure, 125
legislative procedure, 120
provisions as to introduction and passing of bills, 120
joint sitting of both Houses, 120
power to amend the Constitution, 308
power to make provision regarding election of legislature, 281
powers and privileges of Parliament, 120
salaries and allowances of members, 120
procedure in financial matters
annual finance statement, 122
appropriation bill, 123
assent to bills, 122
money bills, 121
special provisions as to finance bills, 125
supplementary, addition or excess grants, 124
votes on account, vote of credit and exception grant, 124
with respect to estimates, 123
qualification for membership of, 112
readjustment after each census, 111
rights of Ministers to, 113
right of President to address to, 112
rights of Attorney General to, 113
session, propagation and dissolution of, 112
special address by President to, 112
secretariat of, 115
Passport Act, *1967*, 55
Passport, 9
Pension, 23
Police atrocities, 51
Police forces, 87
Preamble
basic structure, 1
nature of the polity, 1
secularism, 3
social justice, 2
socialist, 2
sovereign, 4
President, 97
condition of office of, 99
election of, 98, 102
eligibility of re-election of, 99
executive power of, 97, 106
legislative power to promulgate ordinances during recess of Parliament, 126

manner of election of, 98
oath and affirmation by, 100
power to grant pardons, 103
power to adopt the laws, 322
power to make orders in respect of persons under preventive detention, 323
power to remove difficulties, 325
power to suspend, remit or commute sentence, 103
procedure for impeachment of, 100
qualification for election of, 99
term of office of, 99
time of holding election, 100
Presidential clemency and death sentence, 104
Press, 39
Preventive detention, 55, 61
Price fixation, 77
Priests, 65
Prime Minister
duties of, 109
Prisoners, 56
classification of, 56
handcuffing of, 56
interview of, 56
restriction on 57
torture of, 56
wrongful detention of, 56
Privacy, 49
Private industry and pollution, 57
Procedural Discrimination, 20
Proclamation of emergency, 294
duty of union to protect state against external aggression and internal disturbances, 296
effect of, 295
provision in case of failure of constitutional machinery, 296
provision relating to distribution of revenues while, 290
suspension of provision of Art. 19, 300
suspension of the enforcement of the right, 300
Prostitution, 57
Public Hanging, 57
Public interest litigation, 81
Public Service Commission, 270, 325
appointment and term of office of member, 271
for the union and for states, 270
functions of, 274
power to make regulation as to condition of service of members and staff of, 273
prohibition as to holding of offices by members of, 273
removal and suspension of a member of, 272
Publication of Proceedings of Parliament, 303
protection of, 303
Punishment of attempted suicide, 57

Q

Qualifying minimum marks, 32
Question of fact, 136
Quo warranto, 192

R

Rajparmukhs, 302
Regional Council, 346
constitution of, 346
powers of, 347
Religious Trusts, 93
Relation between Union and States, 222
distribution of legislative power, 222
extent of laws made by Parliament and the legislatures of states, 222
inconsistency between laws made by Parliament and laws made by legislature of state, 229
inconsistency between laws made by Parliament under Articles 249 and 250 and laws made by legislature of states, 229
legislation for giving effect to international agreements, 229
power of Parliament to legislate with respect to matter in the state list in national interest, 228

power of Parliament to provide additional courts, 228

power of Parliament to legislate with respect to any matter in the state list if a proclamation of emergency in operation, 228

power of Parliament to legislate for two or more state by consent and adoption of such legislation by any other state, 229

requirements as to recommendation and previous sanctions to be regarded as matters of proceeding only, 231

residuary powers of legislation, 228

subject matter of law made by Parliament and by legislatures of states, 224

Relaxation on standard of eligibility, 32

Rent Control Legislation, 20

Reorganisation of Territory, 7

existing laws, 7

Report on Capital Punishment, 105

Res judicata, 84, 193

Reservation

and promotion, 32

in reservation, 29

in university, 29

to single post, 32

Reservation of seats and special reservation to cease after fifty years, 285

Right

before law, 17

of equality, 17, 38

of minorities, 69

to consult, 60

to die, 53

to education, 92

to know, 38

to own property, 67

to public assistance, 92

to work, 92

Royalties for Industries, 20

Rule making power, 259

Rules of Procedure, 164, 165

Rules of Court, 141

S

Salaries and allowances of members, 159

Sales tax on Restaurants, 26

Sapru Committee, 17

Sapru Report, 17

Scheduled Caste, 25

Scheduled and Tribal Areas, 220

administration of, 220

formation of an autonomous state comprising certain tribal areas in Assam, 221

Scheduled Castes and Scheduled Tribes, 288, 289

control of Union for welfare of , 287

in service and post, 285

reservation of seats in the House of People for, 282

reservation of seats in Legislative Assemblies, 283

special officer for, 286

Scheduled Tribes Women, 58

Scheduled Areas, 287

control of Union over administration for welfare of, 287

Secretariat of State Legislature, 156

Secularism, 5

Service Rules, 24

Rule of termination, 23

Services, 253

dismissal, removal or reduction in rank of persons employed in civil capacity under the Union or State, 262

interpretation, 253

power of Parliament to vary or revoke conditions of service of officers of certain officers, 270

recruitment and condition of service of person serving the Union or a State, 253

tenure of office of persons serving the Union or State, 261

under the Union and the States, 253

Sexual Harassment, 49
Sikkim, 318
special provision for State of, 315
Speaker and Deputy Speaker, 154
not to preside, 155
power of, 114
salaries and allowances, 115, 156
vacation and resignation from the office, 114, 154
Special provision relating to certain classes, 282
Specific Relief Act, *1963*, 263
State legislature, 152
duration of, 152
qualification for membership of, 152
right of Governor to address to, 153
rights of ministers and Advocate General as respects to, 154
session, prorogation and dissolution of, 152
special address by Governor to, 153
State List, 368
State, 144
abolition and creation of, 150
conduct of business of the Government of, 148
constitution of legislature of, 150
duties of the Chief Minister as respect the furnishing of information to Governor of, 149
executives of, 144
Executives power of, 145
State list schedule, 327
Union territories, 331
Stock exchange, 25
Subordinate Courts
application of the provisions to certain class or classes of magistrates, 203
appointment of District Judges, 201
control over, 202
recruitment of persons other than district judge to the judicial service, 202
validation of appointments of and judgments *etc.* delivered by district Judge, 201
Supplementary, additional or excess grants, 164
Supreme Court, 127
ancillary powers of, 138
appellate jurisdiction of, 131, 132
appointment of Acting Chief Justice, 129
appointment of Acting Judges, 129
appointment of Judge, 128
attendance of retired judges at sitting of, 130
certificate for appeals to, 133
civil and judicial authorities to act in aid of, 141
conferment on the Supreme Court of powers to issue certain writs, 138
enforcement of decrees and order of, 140
enlargement of jurisdiction of, 137
establishment and Constitution of, 127
jurisdiction and powers of Federal Court under existing law to be exercisable by, 134
law binding on Courts declared by, 138
officers and servants and the expenses of, 142
original jurisdiction of, 130
power of president to consult to, 141
review of judgment or orders by, 137
rules of Court, 141
salaries of Judges, 129
seat of, 130
special leave to appeal by, 134
to be a court of record, 130
transfer of certain cases, 138

T

Tax exemptions, 25
Taxation Law, 25
Telephone tapping, 49
Temporary, transitional and Special Provisions, 310
Tenders, 22
Territorial Waters, 6
Territory of India, 6

Terrorists Act, 58
Threat to life, 48
Trade, Commerce and Intercourse, 250
freedom of , 250
power of Parliament to impose restriction on, 251
within the territory of India, 250
Transitional Provisions, 270, 358
Treaties on Human Rights, 16
Treaties, agreements, 303
bar to interference by Courts arising out of certain, 303
Trial by media, 37
Tribal Areas, 345, 358
provision as to administration of, 345
Tribes advisory council, 342
Tribunals for other matter, 278
Tribunals, 276

U

Union Judiciary, 127
Union List, 363
Union Territories, 203
administration of, 203
creation of local legislative or Council or minister or both for, 203
High Court for, 207
power of Administrator to promulgate ordinances, 205
power of president to make regulations, 206
provision in case of failure of constitutional machinery, 205
special provision with respect to Delhi, 203
Union, 6, 97
Attorney General for India, 108
Conduct of Government business, 109
duties of Prime Minister, 109
other provision as to minister of, 108
territory of, 6
Union-State relation, 3

V

Vacation of Seats, 157
Vice President, 97, 100
election of, 101
time of holding of, 102
ex officio chairman of council of State, 101
oath or affirmation by, 102
to act as President, 101
Voidness, 16
Voting in Houses, 156

W

Women and Sexual Harassment, 29
World Conference on Human rights, 16
Writ against Court Martial, 86
Writ Jurisdiction, 82
limits of, 82

LAW BOOKS FROM UNIVERSAL

PARLIAMENTARY PROCEDURE — *SUBHASH C. KASHYAP*
LAW, PRIVILEGES, PRACTICE AND PRECEDENTS
2000 Edn. (In 2 Volumes) — Rs. 1975

CONSTITUTIONAL LAW OF INDIA — *H.M. SEERVAI*
4th Edition (In 3 Volumes) — Rs. 2400

THE LAW OF INDUSTRIAL DISPUTES — *O.P. MALHOTRA*
5th Edition 1998, Reprint 2000 (In 2 Volumes) — Rs. 1500

THE CONSTIUTION OF JAMMU & KASHMIR
ITS DEVELOPMENT AND COMMENTS — *JUSTICE A.S. ANAND*
3rd Edition 1998 — Rs. 425

CONSTITUTIONS OF THE WORLD — *M.V. PYLEE*
2000 Edition — Rs. 1150

BANKING LAW IN THEORY AND PRACTICE — *S.N. GUPTA*
3rd Edition 1999 (In 3 Volumes) — Rs. 1395

LAW OF MARRIAGE & DIVORCE — *PARAS DIWAN*
3rd Edition 1997 — Rs. 650

THE CONSTITUTION OF INDIA — *P.M. BAKSHI*
WITH SELECTIVE COMMENTS
4th Edition, 2000 — Rs. 110

Published by
UNIVERSAL LAW PUBLISHING CO. PVT. LTD.
Available at
UNIVERSAL BOOK TRADERS

- 80, Gokhale Market, Opp. Tis Hazari Courts, Delhi-110 054 Phones : 3961288, 3911966, 3914487
  FAX : 011-7459023, 3924152 e-mail : unilaw@vsnl.com Website : www.unilawbooks.com
- *Branch* : C-27/1, Connaught Place, Middle Circle, New Delhi-110 001 Phones : 3323277, 3713671

UNIVERSAL
50933
1. 2 cop

Universal's

INFORMATIVE LEGAL HANDBOOKS

MOTOR ACCIDENT CLAIMS *Janak Raj Jai* 2nd Edn. 1998 Rs. 195

DIVORCE LAW & PROCEDURE *Janak Raj Jai* 2nd Edn. 1996 Rs. 165

BAIL LAW & PROCEDURES With tips to avoid police harassment *Janak Raj Jai* 2000 Rs. 150

Universal's CRIMINAL MANUAL Containing Cr. P.C., I.P.C. & Evidence 2000 Pocket Size Hardbound Rs. 175

MAKE YOUR WILL YOURSELF *H.L. Kumar* 1999 Rs. 125

SALE & PURCHASE OF PROPERTIES alongwith Model Drafts *V.L. Madan* 2nd Edn. (Reprint) 2000 Rs. 210

LAW RELATING TO INSURANCE With special reference to Consumer Protection Act *R.M.Vats* 1999 Rs. 175

LAW RELATING TO TELEPHONES With special reference to Consumer Protection Act *R.M. Vats* 2nd Edn. 2000 Rs. 250

ENVIRONMENT AND POLLUTION LAW MANUAL *S.K. Mohanty* 2000 Rs. 250

ELECTRICITY LAW MANUAL *A. Abraham* 2nd Edn. Rep. 2000 Rs. 195

MOTOR VEHICLES MANUAL *Amardeep Kaushal* 1998 Edn. Rs. 250

PATENTS, TRADE MARKS, COPYRIGHT, DESIGNS AND GEOGRAPHICAL INDICATIONS *Dr. B.L. Wadehra* 2nd Edn. 2000 Rs. 340

BANKS AND THE CONSUMER PROTECTION LAW *S.N. Gupta* 2000 Edn. Rs. 250

MEDICAL NEGLIGENCE AND LEGAL REMEDIES *A.K. Kaushal* 2nd Edn. Rep. 2000 Rs. 195

CONSUMER PROTECTION LAW *Anoop K. Kaushal* 2000 Rs. 175

DISHONOUR OF CHEQUES Liability Civil and Criminal *S.N. Gupta* 4th Edn. In Press

OBLIGATION OF EMPLOYERS UNDER LABOUR LAWS *H.L. Kumar* 3rd Edn. Rep. 1999 Rs. 195

EMPLOYERS RIGHTS UNDER LABOUR LAWS 2000 *H.L. Kumar* Rs. 125

PRACTICAL GUIDE TO LABOUR MANAGEMENT A-Z from Selection to Separation *H.L. Kumar* 3rd Edn. Rep. 2000 Rs. 195

WHAT EVERYBODY SHOULD KNOW ABOUT LABOUR LAWS *H.L. Kumar* 2000 Rs. 110

LABOUR PROBLEMS AND REMEDIES *H.L. Kumar* 7th Edn. Rep. 2000 Rs. 210

Available at

UNIVERSAL BOOK TRADERS

80, Gokhale Market, Opp. Tis Hazari Courts, Delhi-110 054 Phs : 3961288, 3911966, 3914487
Fax : 011-7459023, 3924152 e-mail : unilaw@vsnl.com Website : www.unilawbooks.com
Branch : C-27/1, Connaught Place, Middle Circle, New Delhi-110001 Phs : 3323277, 3713671

Fed = dist ∩ Pow
= repr ∩ Gov
= legis supreme ∩ exec

OTHER BOOKS OF YOUR INTEREST

H. M. Seervai's
Constitutional Law of India
4th Edition (In 3 Volumes)

Justice A.S. Anand's
The Constitution of Jammu & Kashmir
Its Development and Comments
3rd Edition

A.V. Dicey's
An Introduction to the Study of the Law of the Constitution
10th Edition, Indian Economy Reprint

Keir & Lawson's
Cases in Constitutional Law
6th Edition, Indian Economy Reprint

Heuston's
Essays in Constitutional Law
2nd Edition, Indian Economy Reprint

Sylvia Snowiss'
Judicial Review and the Law of the Constitution
Indian Economy Reprint

ISBN 81-7534-176-9

9 788175 341760

Universal
Law Publishing Co. Pvt. Ltd.